



# A Documentary History of American Industrial Society

Volume III

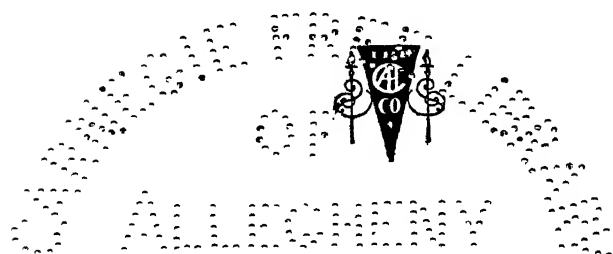
# A Documentary History of American Industrial Society

Edited by John R. Commons  
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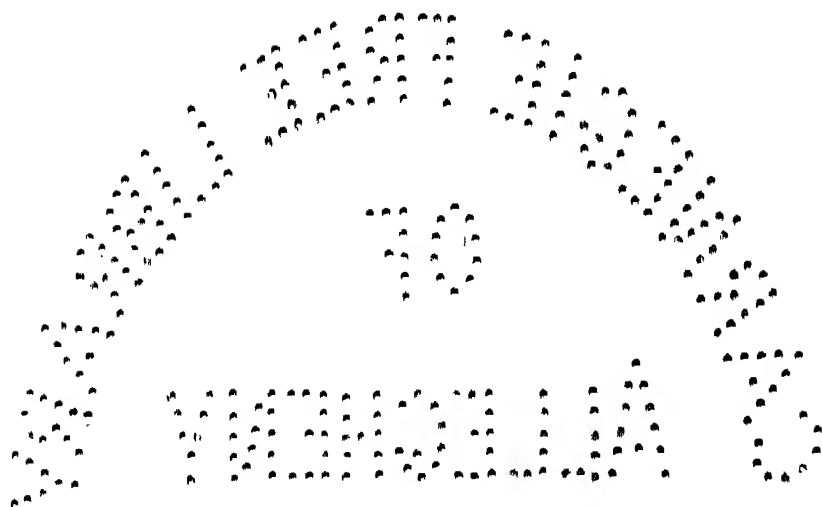
Volume III  
Labor Conspiracy Cases



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# AMERICAN BUREAU OF INDUSTRIAL RESEARCH

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- VOL. I      Plantation and Frontier, Volume 1,  
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# LABOR CONSPIRACY CASES

1806-1842

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Volume I

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## PREFACE

Volumes III and IV are intended to place in the hands of students of industrial and legal history all of the reports on labor conspiracy cases in the United States during the period ending with the notable decision of Justice Shaw of Massachusetts in *Commonwealth v. Hunt*, 1842. These cases turned upon the important question known to-day as the "open" or "closed shop," that is, the refusal to work with non-union men. Several of the cases, beginning with the Philadelphia Cordwainers in 1806, are reprints of the stenographers' reports of the testimony, and these bring out, not only the legal questions involved, but also first-hand, detailed descriptions of the industrial and commercial conditions of the time. These reports were privately printed and sold to the public on the strength of their novelty and the interest aroused by the new labor movement which culminated in 1836. An extended search has been made for these reports, and in some instances but one copy was found in existence. A few libraries, whose catalogues included the titles, could not locate the reports. The present volume makes them accessible to all libraries and students.

In each instance practically the entire report is reprinted *verbatim*, including errors, and the bracket paging gives the original. Omissions indicated are either legal repetition or irrelevant matters as explained in editors' brackets or in the footnotes. All doubts on this point have been settled on the side of including the

passages in question so that this volume is practically a set of complete reprints.

In cases where there is no report, search has been made through the newspapers, and so much as pertains to the actual progress of the trial is here reprinted. In other volumes of this series will be reproduced collateral documentary material taken from newspapers of the time showing the labor movements behind these conspiracy cases.

It has not been thought necessary to reprint the following cases, which are accessible in the majority of public law libraries, as cited, *viz.*, Master Ladies' Shoemakers, 1821; New York Hatters, 1823; Geneva Shoemakers, 1835; Commonwealth *v.* Hunt, 1840 and 1842.

Extended search has been made for record of an alleged conspiracy and trial of journeymen bakers in New York in 1741. This case is cited by the United States Commissioner of Labor in the *Report on Strikes and Lockouts* (1887, pp. 1029, 1030) as probably the first strike in this country. The only original source for this and probably all other statements regarding the bakers of 1741 is contained in the argument of counsel in the New York Cordwainers' Case, as given in Volume iii pages 309 and 326-328. A study of these statements makes it quite probable that it was not a strike of journeymen but a stopping of business by small master bakers in remonstrance against an ordinance or statute. An examination of the City Hall *Recorder* and the minute books of the Mayor's Court for the years preceding and following 1741 shows prosecutions of bakers for violating ordinances as to quality and weight, but whatever record there may have been of a conspiracy case is missing. We may be reasonably certain that the Philadelphia Cordwainers' Case of 1806, included in

this volume, is the first trial of wage-earners as such for trade-union conspiracy.

In searching for these reports, in transcribing and verifying, we have been assisted by Dr. John B. Andrews, Dr. Helen L. Sumner, Mrs. W. H. Lighty, and Miss Frances M. Ely of the American Bureau of Industrial Research; by Dr. T. W. Glocker of Johns Hopkins University; Dr. George B. Mangold and Dr. Grover G. Huebner of the University of Pennsylvania; Mr. D. I. Green, Hartford, Connecticut; Mr. Hugh Wallace, Buffalo; Miss Clara Commons, New York; and the librarians of the University of Iowa, the Bar Association, New York, and the Law Association of Philadelphia.

JOHN R. COMMONS — EUGENE A. GILMORE.  
University of Wisconsin, November, 1909.

# INDUSTRIAL STAGES, CLASSES, AND ORGANIZATIONS—1648 TO 1895

1 EXTENT OF MARKET	2 KIND OF BARGAIN	3 CAPITAL OWNERSHIP CUSTOMER, MERCHANT, EMPLOYER, LABORER			4 INDUSTRIAL CLASSES			5 KIND OF WORK	6 COMPETITIVE MENACE	7 PROTECTIVE ORGANIZATIONS	8 CASE	
1	Itinerant	Wages	Customer-Employer Material Household Board and Lodging		Journeyman Hand tools		Farm family Skilled helper		Skilled supervision	Family workers	None	Itinerant individuals 1648
2	Personal	Custom order	Merchant-Master-Journeyman Material Hand tools Home shop			Merchant-Master-Journeyman		"Bespoke"	"Bad Ware"	Craft guild	Boston "Company of Shoemakers" 1648	
3	Local	Retail	Merchant-Master Material Finished stock Short credits Sales shop		Journeyman Hand tools Home shop		Merchant-Master-Journeyman		"Shop"	"Market" work "Advertisers" Auctions	Retail Merchants' Association	Philadelphia "Society of the Master Cordwainers" 1789
4	Waterways	Wholesale order	Merchant-Master Material Finished stock Long credits Store-room		Journeyman Hand tools Home shop		Merchant-Master	Journeyman	"Order"	"Scabs" Interstate producers	Journeyman's Society Masters' Society	Philadelphia "Federal Society of Journeymen Cordwainers," 1794-1806
5	Highways	Wholesale speculative	Merchant-Capitalist Material Finished stock Bank credits Warehouse "Manufactory"	Contractor Workshop	Journeyman Hand tools	Merchant-Capitalist	Contractor	Journeyman	Team work	Prison Sweatshop "Foreigner" Speeding up	Journeyman's Society Manufacturers' Association* Employers' Association	Philadelphia "United Beneficial Society of Journeymen Cordwainers" 1835
6	Rail	Wholesale speculative	Merchant-Capitalist Material Finished stock Bank credits Warehouse "Manufactory"	Contract Manufacturer Work shop	Journeyman Footpower machines	Merchant Capitalist	"Manufacturer"	Journeyman	Team work	Green hand Chinese Women Children Prisoners Foreigners	Trade Union Employers' Association Manufacturers' Association *	"Knights of St. Crispin" 1868-1872
7	World	Factory order	Manufacturer Material Stock Credits Power machinery Factory		Laborer None	Manufacturer		Wage-earners	Piece work	Child labor Long hours Immigrant Foreign products	Industrial Union Employers' Association Manufacturers' Association *	"Boot and Shoe Workers' Union." 1895

\* The "Manufacturer's Association" is the association based on the merchant or price-fixing function.

# INTRODUCTION TO VOLUMES III AND IV

## INDUSTRIAL STAGES, CLASSES, AND ORGANIZATIONS<sup>1</sup>

Industrial evolution, like political evolution, leaves documentary records mainly when it reaches the stage of class-conscious organization. Written constitutions, statutes, by-laws, court records are evidence of social classes organized for self-assertion and endeavoring to establish checks and balances for their mutual government. In this respect industrial history repeats political history, and the emergence of industrial classes produces the formal documents necessary for effective organization of the class. Different industries have different rates of progress in this unfolding of classes. In the boot and shoe industry, more than any other, the conditions seem to have forced the industrial classes into protective organizations. These have brought forth documentary records in relative abundance, and by these the historian may trace the stages of industry through centuries of evolution. A highly skilled and intelligent class of tradesmen, widely scattered, easily menaced by commercial and industrial changes, they have resorted with determination at each new menace to the refuge of protective organizations. Of the seventeen trials for conspiracy prior to 1842, the shoemakers occasioned nine. Taking the struggles of this harassed trade, it is possible to trace industrial stages by the light of American documents from the guild to the factory.

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<sup>1</sup> Permission to make use in this introduction of an article, "American Shoemakers—A Sketch of Industrial Evolution, 1648-1895," appearing in the *Quarterly Journal of Economics*, Nov., 1909, has been kindly granted by the editor.

The following analysis of these stages is based primarily on a study of the case of the Philadelphia shoemakers, reprinted in the present volume. In that case is revealed two stages of development, one represented by the "Society of the Master Cordwainers," 1789, and the other by the "Federal Society of Journeymen Cordwainers," 1794. Two earlier stages are found in the charter of the "Company of Shoemakers" of Boston, 1648, reprinted in the footnote below. The later stages will be found in the "United Beneficial Society of Journeymen Cordwainers," Philadelphia, 1835, appearing in volume VI; the "Knights of St. Crispin," 1868, in volume X; while the "Boot and Shoe Workers' Union," 1895, is the modern form of organization not included in these reprints of industrial documents.

Each of these organizations stands for a definite stage in industrial evolution from the primitive itinerant cobbler to the modern factory; each represents an internal contention over the distribution of wealth provoked by external conditions of marketing or production; each was productive of written documents preserving to us the types of organization that struggled for adaptation to the evolving economic series.

"THE COMPANY OF SHOOMAKERS," BOSTON, 1648<sup>2</sup>

Probably the first American guild was that of the

<sup>2</sup>. . . Vppon the petition of the shoemakers of Boston, & in consideration of of the complaynts which haue bin made of the damag which the country sustaynes by occasion of bad ware made by some of that trade, for redresse hereof, its ordred, & the Court doth hereby graunt libtie & powre vnto Richard Webb, James Euerill, Rob<sup>t</sup> Turner, Edmund Jackson, & the rest of the shoemakers inhabiting & howskeepers in Boston, or the greatest number of them, vppon due notice giuen to the rest, to assemble & meete together in Boston, at such time & times as they shall appoynt, who beinge so assembled, they, or the greater number of them, shall haue powre to chuse a master, & two wardens, with fowre or six associats, a clarke, a sealer, a searcher, & a beadle, with such other officers as they shall find nessessarie; & these officers & ministers, as afforesd, every yeare or oftener, in case of death or departure out of this jurisdiction, or remoueall for default, &c', which officers & ministers shall each of them take an oath sutable to their places before the Gou'nor or some of the magists,

“Shoomakers of Boston,” and its charter of incorporation, granted by the Colony of the Massachusetts Bay on October 18, 1648, is the only complete American charter of its kind, of which I have knowledge. The

the same beinge pscibed or allowed by this Court; & the sd shoomakers beinge so assembled as before, or at any other meettinge or assembly to be appoynted from time to time by the master & wardens, or master or wardens with two of the associats, shall haue power to make orders for the well gouerninge of theire company, in the mannaginge of theire trade & all the affayres therevnto belonging, & to change & reforme the same as occasion shall require, & to anex reasonable pennalties for the breach of the same; provided, that none of theire sd orders, nor any alteration therein, shalbe of force before they shalbe pvsed & allowed of by the Court of that country, or by the Court of Assistants. And for the better executing such orders, the sd master & wardens, or any two of them with 4 or 6 associats, or any three of them, shall haue power to heare & determine all offences agaynst any of theire sd orders, & may inflict the pennalties pscibed as aforesd, & asseesse fines to the vallew of forty shillings or vnder for one offence, & the clarke shall giue warrent in writinge to the beadle to leuie the same, who shall haue power therevppon to leuie the same by distresse, as is vsed in other cases; & all the sd fines & forfeitures shalbe imployd to the benefit of the sd company of shoomakers in generall, & to no other vse. And vppon the complaynt of the sd master & wardens, or theire attorn<sup>y</sup> or advocate, in the County Court, of any pson or psons who shall vse the art or trade of a shoomaker, or any pt thereof, not beinge approued of by the officers of y<sup>e</sup> sd shomakers to be a sufficient workman, the sd Court shall haue power to send for such psons, & suppress them; provided also, that the prioritie of theire graunt shall not giue them precedency of other companies that may be graunted; but that poynt to be determined by this Court when there shalbe occasio thereof; provided also, that no vnlawfull combination be made at any time by the sd company of shoomakers for inhancinge the prices of shooes, bootes, or wages, whereby either o<sup>r</sup> owne people may suffer; provided also, that in cases of difficultie, the sd officers & associats doe not pceede to determine the cause but by the advice of the judges of that county; provided, that no shoomaker shall refuse to make shooes for any inhabitant, at reasonable rates, of theire owne leather, for the vse of themselues & families, only if they be required therevnto; provided, lastly, that if any pson shall find himselfe greiued by such excessiue fines or other illegall pceedinges of the sd officers, he may complayne thereof at the next Court of that county, who may heare & determine the cause. This commission to continue & be of force for three yeares, & no longer, vnles the Court shall see cause to continue the same.

The same comission, verbatim, with th esame libtie & power for the same ends, vpon the like grounds, is giuen vnto Thomas Venner, John Millum, Samuel Bidfeild, James Mattocks, W<sup>m</sup> Cutter, Bartholomew Barlow, & the rest of the coops of Boston & Charlstowne, for the pventing abuses in theire trade. To continue only for three yars, as the former, *mutatis mutandis*. . . —*Records of Massachusetts* (1644-1657), vol. iii, 132-133.

coopers were granted "the same commission, *verbatim*" on the same date. A contemporary reference to this incorporation of shoemakers is that of Edward Johnson, in his *Wonder-Working Providence of Zion's Saviour in New England* (London, 1654).<sup>8</sup> Speaking of the material progress of the colony and the rapid division of labor he says, "all other trades have fallen into their ranks and places, to their great advantage; especially. Coopers and Shomakers, who had either of them a Corporation granted, inriching themselves by their trades very much."

In the charter of the Boston guild, the main object of the shoemakers was the suppression of inferior workmen who damaged the country by "occasion of bad ware." The officers of the guild were given authority to examine the shoemakers and to secure from the courts of the colony an order suppressing any one whom they did not approve "to be a sufficient workman." They were also given authority to regulate the work of those who were approved and thus to "change and reform" the trade and "all the affayres thereunto belonging." And they were erected into a branch of government with power to annex penalties and to "levy the same by distresse."

At the same time it is evident that the colonial authorities took pains to protect the inhabitants from abuse of these powers by placing their determination "in cases of dificultie" in the hands of the judges of the county, and by allowing appeals to the county court. The two substantial reservations which the colony withholds from the company are the "inhancinge the prices of shooes, bootes, or wages," and the refusal to make shoes for inhabitants "of their owne leather for the use of themselves and families," if required by the latter.

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<sup>8</sup> Massachusetts Historical Society. *Collections*, second ser., vol. iii, 13.

From these reservations we are able to infer the industrial stage which the industry had reached at the time of incorporation.<sup>4</sup> It was the transition from the stage of the itinerant shoemaker, working up the raw material belonging to his customer in the home of the latter, to the stage of the settled shoemaker working up his own raw material in his own shop to the order of his customer. The reservation for the protection of inhabitants is suggestive of statutes of the fifteenth and sixteenth centuries imposing penalties on guild members who refused to work in the house of their customer.<sup>5</sup> The fact that the colony, while granting power to reform the trade, nevertheless thought it necessary to require the shoemaker to continue to work up the leather owned by his customer, although not insisting that he should go to the house of the customer, and thereby leaving the guild free to require its members to set up their own shops, indicates the source of the abuses from which the shoemakers were endeavoring to rid themselves. The itinerant was likely to be poorly trained and he could escape supervision by his fellow craftsmen. He was dependent on his customer who owned not only the raw material but also the workplace, the lodging, and the food supplies of the shoemaker, leaving to the latter only the mere hand tools. He worked under the disadvantage of a new workplace for each new order without the conveniences and equipment necessary for speedy and efficient work. He had to seek the customer, and consequently was at a disadvantage in driving a bargain. This made him, however, a serious menace to the better trained shoemaker

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<sup>4</sup> Bücher, K. *Die Entstehung der Volkswirtschaft* [Wickett's translation, *Industrial Evolution* (New York, 1901)] also Sombart, W. *Der Moderne Kapitalismus*, vol. i, 93-94.

<sup>5</sup> Bücher, *op. cit.*, 169.

working in his own shop and on his own material but waiting for the customer to come.

The Boston guild represented the union in one person of the later separated classes of merchant, master, and journeyman. Each of these classes has a different function. The merchant-function controls the kind and quality of the work, and its remuneration comes from ability to drive the bargain with the customer in the process of adjusting price to quality. The master-function or more properly the employer-function, on the other hand, controls the work-place and the tools and equipment, and passes along to the journeyman the orders received from the merchant. Its remuneration comes from management of equipment and labor. The journeyman-function, finally, is remunerated according to skill and quality of work, speed of output, and the amount and regularity of employment.

Thus, from the standpoint of each of the functions that later were separated, did this primitive guild in self-interest set itself against the "bad ware" of the preceding itinerant stage. From the merchant standpoint the exclusion of bad ware removed a menace to remunerative prices for good ware. From the master standpoint the exclusion of the itinerant transferred the ownership of the workshop and the medium of wage payments from the consumer to the producer. From the journeyman standpoint, the exclusion of the itinerant eliminated the truck-payment of wages in the form of board and lodging by substituting piece-wages for a finished product. And this control of the finished product through all the stages of production gave a double advantage to the craftsman. It transferred to him the unskilled parts of the work hitherto done by the customer's family, thus enabling him at one and the same

stroke both to increase the amount of his work and to utilize the bargaining leverage of his skill to get skilled wages for unskilled work.

By this analysis we can see that when the three functions of merchant, master, and journeyman were united in the same person the merchant-function epitomized the other two. It is the function by which the costs of production are shifted over to the consumer. The master as such looks to the merchant for his profits on raw material, workshop, tools, and wages, and the journeyman looks to him for the fund that will pay his wages.

Now, there is a prime consideration in the craft-guild stage that enhances the power of the merchant to shift his costs to the consumer. This is the fact that his market is a personal one and the customer gives his order before the goods are made. On the other hand, the bargaining power of the merchant is menaced by the incapacity of customers accurately to judge of the quality of goods as against their capacity clearly to distinguish prices. Therefore, it is enough for the purposes of a protective organization in the custom-order stage of the industry to direct its attention solely to the quality of the product rather than the price or the wage, and to seek only to exclude bad ware and the makers of bad ware. Thus the Boston shoemakers and coopers, though enlisting the colonial courts only in the laudable purpose of redressing "the damage which the country sustaynes by occasion of bad ware," succeeded thereby in "inriching themselves by their trades very much." In this they differed from later organizations based on the separation of<sup>1</sup> classes, to whom competition appeared as a menace primarily to prices and wages and only secondarily to quality.

THE SOCIETY OF MASTER CORDWAINERS, 1789, AND  
THE FEDERAL SOCIETY OF JOURNEYMEN  
CORDWAINERS, 1794, PHILADELPHIA

This separation first appears a century and a half thereafter in the case of the cordwainers of Philadelphia. Here we have a fairly full record of the first American association of employers and the first enduring trade union. The conspiracy and strike occurred in November, 1805, and the matter came to trial in the mayor's court in March, 1806. The court permitted the witnesses to recite the entire history of this and the preceding strikes as well as the history of this and the preceding combinations both of journeymen and employers. Consequently we are able to trace from the year 1789 to the year 1806 the development of the boot and shoe industry in Philadelphia, along with the accompanying separation of the interests of the journeymen from those of the masters.

I did not find any record of a guild organization like that in Boston, but there had been a "charitable society" to which both employers and journeymen belonged, and this was yet in existence in 1805.<sup>6</sup> It was the masters who first formed themselves into a separate organization, and this they did in April, 1789. Their early constitution was laid before the court, showing that they had at that time two kinds of "inconveniences," the competition of cheap grades of goods offered for sale at the "public market," and the competition of masters who offered bargain prices by public advertisement. This is shown by their qualifications for membership: "No person shall be elected a member of this society who offers for sale any boots, shoes, &c., in the public market of this city, or advertises the prices of his work,

<sup>6</sup> The Trial of the Journeymen Boot & Shoemakers of Philadelphia, 99.

in any of the public papers or hand-bills, so long as he continues in these practices."

Evidently this society of masters was not organized as an employers' association, for nothing is said of wages or labor. It was organized by the masters merely in their function of retail merchant. The attorneys for the journeymen tried to make out that when the latter organized separately in 1794 they did so in self-defense, as against the masters' association, and they contended that in the masters' constitution were to be found "ample powers" not only to regulate prices but also "to form a league to reduce the wages of their journeymen."<sup>7</sup> And, although they admitted that the association had terminated in 1790, yet they held "it was a Phoenix that rose from its ashes."<sup>8</sup> But it was brought out clearly in evidence that the subsequent resurrections in 1799 and 1805 were provoked by the journeymen's aggressive society, and were but temporary organizations. The Phoenix that kept on repeatedly rising was not the one that had disappeared. In 1789, it had been an organization of masters in their function of retail merchant. In its later stages it was an organization of masters in their function of employer. The distinction, fundamental in economics, caused a realignment in personnel, as will be shown below. The early organization regulated prices and followed the vertical cleavage between producer and consumer. The later organization regulated wages and followed the horizontal cleavage between employer and laborer. In the early organization the journeyman's interest was the same as the master's. In the later ones the journeyman's interest was hostile to both consumer and master.

<sup>7</sup> "Trial," *op. cit.*, page 166.

<sup>8</sup> — *Idem*, pages 129, 174.

The foregoing considerations, as well as the transition to later stages, will become more apparent if we stop for a moment to examine the economic conditions that determine the forms of organization. The two economic factors of largest import are the progress of invention in tools and machinery (the technique of the "instruments of production") and the extension of markets through growth of population and improved transportation. Two schools of industrial philosophy ascribe different values to these factors. The socialist school, following Karl Marx, bases its explanation on the technique of production; the liberal (free trade or protectionist) school finds its explanation in the extension of the markets. Perhaps the difference is only one between the immediate and the remote causes of industrial evolution, but, at any rate, so far as concerns the characteristic features of the labor movement as we find them in the documents at our command, it is the extension of the markets more than the technique of production that determines the origin of industrial classes, their form of organization, their political and industrial policies and demands, and their fate. Even the inventions of machinery follow rather than precede the widening of the markets.

It is this preëminence of the market that gives character to the four periods into which we have divided our collection of documents. The colonial period, in its economic characteristics, extends to the decade of the twenties in the nineteenth century. This is the dormant period of the labor movement although a slight awakening appears as a result of the extension and unification of the markets following the adoption of the federal constitution and the breakdown of colonial

tariffs and trade obstacles. The mode of this interruption appears in the case of the Philadelphia Cordwainers, 1806.

The second period, that of the merchant-capitalist or merchant-manufacturer with its extension of waterways, highways, and banking facilities, and its awakening of labor as a conscious movement, began in the twenties, and the labor uprising reached its height in 1835 and 1836 and its collapse in 1837. This period is covered in volumes v and vi.

The two decades, 1840 to 1860, volumes vii and viii, retain economically the characteristics of the merchant-capitalist period, but they are clearly marked off by the new phenomena of philosophical, humanitarian, and political protest. This protest, diverted into the antislavery contest after 1852, gave way to a "pure and simple" trade union movement beginning in 1853. But it was not until the two decades, 1860 to 1880, volumes ix and x, with the market nationalized by the railway and protected by the tariff, that invention in the technical processes of industry came to have profound effects. This was truly a revolutionary period in which the merchant-capitalist system was giving way to the factory system. Its effects on labor are vividly portrayed in the "Knights of St. Crispin."

The period of current events, since 1880, is the period of the real dominance of the factory system. These several stages can be traced quite clearly in the boot and shoe industry, and while, of course, different industries have different rates of progress, it is the distinction of this industry that its documentary records, joined to its historical position, make it preëminently interpretative of the others.

Returning, therefore, to our analysis of the economic conditions that determine the forms of organization as displayed in the shoe industry, we discover the following details in the development of the market. The cordwainer of the Boston guild made all of his boots and shoes to the order of his customer at his home shop. His market was a custom-order market, composed of his neighbors. His product, in the terminology of 1806, was a "bespoke" product. He was in his own person master, custom-merchant, and journeyman.

Next, some of the master cordwainers begin to stock up with standard sizes and shapes for sale to sojourners and visitors at their shops. They cater to a wider market, requiring an investment of capital, not only in raw material, but also in finished products and personal credits. They give out the material to journeymen to be made up at their homes and brought back to the shop. In addition to "bespoke work," the journeyman now makes "shop work," and the master becomes retail-merchant and employer. This was the stage of the industry in Philadelphia in 1789—the retail-shop stage.

Next, some of the masters seek an outside or foreign market. They carry their samples to distant merchants and take "orders" for goods to be afterwards made and delivered. They now become wholesale merchant-employers, carrying a larger amount of capital invested in material, products, and longer credits, and hiring a larger number of journeymen. In addition to "bespoke" and "shop" work the journeyman now makes "order" work for the same employer. This is the wholesale-order stage of the industry.

This was the stage in Philadelphia in 1806. At that time we find the journeyman engaged on one kind and quality of work, with the same tools and workshops,

but with four different destinations for his product. Each destination was a different market with a different level of competition, leading ultimately after a struggle, to differences in quality of product. The terms employed at the time recapitulate the evolution of the industry. "Bespoke work" recalls the primitive custom market of the Boston guild, now differentiated as the market offered by the well-to-do for the highest quality of work at the highest level of competition. "Shop work" indicates the retail market of less particular customers at a wider but lower level of competition and quality. "Order work" indicates a wholesale market made possible by improved means of transportation, but on a lower level of strenuous competition and indifferent quality projected from other centers of manufacture. "Market work"—i.e., cheap work sold in the public market—indicates the poorest class of customers and consequently the lowest level of competition, undermining especially the shop-work level, and, to a lesser degree, the order-work level, but scarcely touching the bespoke level.

It was the widening out of these markets with their lower levels of competition and quality, but without any changes in the instruments of production, that destroyed the primitive identity of master and journeyman cordwainers and split their community of interest into the modern alignment of employers' association and trade union. The struggle occurred, not as a result of changes in tools or methods of production, but directly as a result of changes in markets. It was a struggle on the part of the merchant-employer to require the same *minimum quality* of work for each of the markets, but lower rates of wages on work destined for the wider and lower markets. It was a struggle on the part

of the journeymen to require the same *minimum wage* on work destined for each market, but with the option of a higher wage for a higher market. The conflict came over the wage and quality of work destined for the widest, lowest, and newest market. This will appear from the evidence brought out at the trial.

In the Boston guild it does not appear that there were any journeymen, as such. Each "master" was at first a traveler, going to the homes of his customers and doing the skilled part of the journeyman's work. Next, in the guild stage, he was the all-round journeyman, not only "his own master" but, more important, his own merchant. The harmony of capital and labor was the identity of the human person. The market was direct. The orders were "bespoke."

Even in Philadelphia in 1789, when the masters had added "shop work" and had separated themselves out as an association of retail merchants, the interests of the journeymen coincided with theirs. The journeymen were even more distressed by "market" work than the masters. At the public market there was no provision for holding back goods for a stated price. Everything had to be sold at once and for cash. Goods were not carried in stock. Consequently the prices paid were exceedingly low. Job Harrison, the "scab," testified that, whereas he was regularly paid 9s. for making a pair of shoes, he could get only 3s. to 3s. 6d. on "market work." If he should quit his job by joining the "turn-out" under orders from the society he would be "driven to market work," at which he could not get half a living.<sup>9</sup> So also declared Andrew Dunlap and James Cummings, members of the Society, who had resorted to "market" work during the turn-out.<sup>10</sup> The journey-

<sup>9</sup> Trial, *op. cit.*, pages 74, 83.

<sup>10</sup> — *Idem*, pages 91, 96.

men's society, indeed, in its contest with the masters, permitted its members to send their product to the public market, or to work for merchants who supplied that market, and the society members pieced out their strike benefits and what they could get by "cobbling," with what they could get at market work.<sup>11</sup> But this was evidently a war measure and not an indication that the journeymen were less hostile than the retail merchant toward the public market.

The two other kinds of work that prevailed in 1789 were "shop" work and "bespoke" work. The prices paid to the journeymen for these two kinds of work were originally the same. If they differed in quality the difference was paid for at a specific price for extra work, as when Job Harrison got six pence extra a pair if he would "side line" his shoes with silk.<sup>12</sup> But the payment for extras was the same for shop work as it was for "bespoke" work. The same workman made both, and made them in the same way, with the same tools. One of the grievances of the journeymen was the innovation attempted in 1798 by one of the employers to reduce the price of shop work. "I made some work for Mr. Ryan," said John Hayes, "and he made a similar reduction upon me, because they were to go into the shop, when he used before to give the same price for shop goods, as he did for bespoke work."<sup>13</sup> The society demanded similar pay for similar work, whether shop or bespoke. "None are to work under the price," said Keegan, a member of the committee that met the employers; "a good workman may get more."<sup>14</sup>

Thus the journeymen were at one with the masters

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<sup>11</sup> Trial, *op. cit.*, pages 82, 88, 93.

<sup>12</sup> — *Idem*, page 74.

<sup>13</sup> — *Idem*, page 121.

<sup>14</sup> — *Idem*, page 120.

in their opposition to "market" work. For the journeyman it was a menace to his wages on shop work. For the master it was a menace to his business as a retail storekeeper.

It was the third, or "export" stage of the market, with its wholesale "order" work, that separated the interests of the journeyman from those of the master. Here the retail merchant adds wholesale orders to his business. We find John Bedford describing the way in which he branched out.<sup>15</sup> He had invested his "little capital" in stock which he could not market at retail and so he made a trip by coastwise vessel as far south as Charleston in order "to force a sale." He returned with "two or three small orders," but, before he could fill these orders his journeymen "turned out" and he was forced to raise his prices, thereby losing four customers and the sale of four thousand dollars' worth per year.

Six years later Wm. Montgomery was doing an "export" business.<sup>16</sup> He had orders as far south as New Orleans "to the amount of 2,000 dollars," and he could not give the "rise of wages" demanded by the journeymen "without a loss in executing those orders." Also, in 1805, Lewis Ryan<sup>17</sup> announced to the committee of journeymen that he would give the "new prices," since he had determined to "relinquish order work," but he would retain only "the best workmen, and that only for bespoke work."

On the other hand, employers who were not branching out for export work were willing to pay the wages demanded and unwilling to join the employers' association. Wm. Young<sup>18</sup> had belonged to the masters' asso-

<sup>15</sup> Trial, *op. cit.*, pages 100-101.

<sup>16</sup> — *Idem*, page 105.

<sup>17</sup> — *Idem*, page 106.

<sup>18</sup> — *Idem*, page 125.

ciation in 1789, when it was only a retail merchants' association, and in 1805 he was still doing only bespoke and shop work. He promptly paid the increased wages and told the committee of employers that he would not join with them in discharging his journeymen.

Likewise, the journeymen who did only bespoke and shop work were not inclined to stand by the union for the increase in prices. Job Harrison said,<sup>19</sup> "if shoes were raised to 9s. I should not be benefited for I had that price already, but you know it cannot be given only on customers' work." The journeymen compelled him to turn out, but afterwards he decided to become a "scab." The same was true of inferior workmen who could not command the wages demanded. These were doubtless kept on "order" work, and when the union demanded that the price on that work should be brought up to the same level as shop and bespoke work, they secretly worked "under wages." The union had a committee "to hunt up cases of the kind" and to demand of employers that such men be discharged.<sup>20</sup>

Thus, as intimated above, the organization of the masters according to their employer-function, as compared with their former organization according to their merchant-function, caused a realignment of personnel. Both the employer and the workman on high-class custom-work "scabbed" on their respective class organizations struggling to control the wholesale-order work.

The several steps in this separation of interests will appear in the history of the journeymen's society. The first society of the journeymen was organized in 1792, two years after the society of master retailers had dissolved. This was apparently a secret society, and may

<sup>19</sup> Trial, *op. cit.*, page 82.

<sup>20</sup> — *Idem*, page 92.

have had some effect on the price of shoes for the price which had originally been 4s. 6d.<sup>21</sup> had been raised to 6s. before 1794.

It was in the latter year that the permanent society was organized which continued until the time of the prosecution in 1806.<sup>22</sup> It secured in that year and in 1796 two increases in the price of shoes, first, to something under one dollar, then to one dollar a pair.<sup>23</sup> These increases affected, however, only shop and bespoke work, so that, after 1796 the "settled price" was 7s. 6d.; but Job Harrison, by making a lighter shoe with silk lining "so as to come nearer to the London dress-shoes" was paid 9s. a pair.<sup>24</sup> At the other and lowest extreme, only "five elevenpenny bits" were paid for "order work." These prices prevailed until 1806. The bespoke and shop work was said to be sold to customers at \$2.76 a pair, but the order work was sold to retailers at \$1.80 a pair.<sup>25</sup> Thus it was that for nominally the same quality of shoe the journeymen's society was able almost to double their wages on the custom and retail work but had brought about an increase of only a few cents on the wholesale-order work. In other words, the employer as retail merchant gave to his employees an advance out of the advanced retail price of his goods, but as wholesale merchant he was not able to give a similar advance. Naturally the better class of workmen gravitated toward the custom and retail work and the inferior workmen towards the wholesale work, so that what was originally the same quality of work, and nom-

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<sup>21</sup> Trial, *op. cit.*, page 118.

<sup>22</sup> — *Idem*, pages 174, 217-218.

<sup>23</sup> — *Idem*, pages 72, 93.

<sup>24</sup> — *Idem*, pages 74, 86.

<sup>25</sup> — *Idem*, page 86.

inally remained the same, became eventually different in quality.

This radiation of price and quality is also observed in the price of boots. These had been advanced in price to the journeymen from \$1.40 per pair in 1792 to \$2.75 per pair in 1796. But the workmen conceded that they should make order work at \$2.50<sup>26</sup> "in order to encourage the exportation trade."<sup>27</sup> This was taken advantage of at the time of the cholera epidemic in 1798 when the journeymen were paid only \$2.25.<sup>28</sup> After the journeymen returned to the city they organized their second strike, in 1798, for an increase. This was immediately granted by the employers, but in the following year, 1799, the employers effected an organization and ordered a return to the former wage. This caused the obstinate strike and lockout of nine or ten weeks, ending in a compromise. Again in 1804, there was another brief strike, at which the journeymen won, and the employers agreed to pay \$2.75. But, after Christmas, when the work became slack, the price of "order work" was reduced to \$2.50.<sup>29</sup> This led to the obstinate strike of 1805 in which the journeymen demanded a flat increase all round to \$3.00 on both wholesale and retail work. But the employers had perfected their organization, and their list of prices made no mention of order work. The workmen lost the strike and were compelled to accept the employers' list. Consequently in 1806, as compared with 1789, the price for boots paid to the journeyman on retail and custom work had advanced from \$1.40 to \$2.75, while the price on whole-

<sup>26</sup> Trial, *op. cit.*, page 121.

<sup>27</sup> — *Idem*, page 124.

<sup>28</sup> — *Idem*, page 121.

<sup>29</sup> — *Idem*, page 123.

sale work of the same quality, after futile efforts of the journeymen to equalize it, was left open to individual bargains.<sup>80</sup> Exactly as in the case of shoes, the differentiation in prices led to a differentiation in quality, executed by superior workmen. The tendency of custom and retail work was toward improved quality, executed by superior workmen. The tendency of the wholesale work was toward inferior quality in the hands of inferior workmen. "At that time [prior to 1792] I believe we did not understand extra work in them, such as they do now," testified James Keegan. "I never do order-work, I am always paid the full wages."<sup>81</sup>

Notice now the characteristic features of the retail- and wholesale-order stages of the industry. The master workman in the retail stage has added a stock of finished goods to his business of custom work. This requires a shop on a business street accessible to the general public with correspondingly high rents. It involves also a certain amount of capital tied up in short credits and accounts with customers. In his shop he has a stock of raw material besides finished and partly finished goods. The merchant-function has thus become paramount, and has drawn with it the master-function. The two functions have equipped themselves with capital—merchant's capital in the form of finished stock, retail store, and short credits—employer's capital in the form of raw material undergoing manufacture by workmen under instructions. The journeymen are left with only their hand tools and their home workshop.

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<sup>80</sup> I am including here only the ordinary "long boots" and "cossacks." The society in 1805 also demanded an increase on the fancy kinds of work recently introduced. See Trial, *op. cit.*, pages 104, 117.

<sup>81</sup> Trial, *op. cit.*, page 118.

Thus the retail market has separated the laborer from the merchant. Labor's outlook now is solely for wages. The merchant's outlook is for quality and prices. But the separation is not antagonism. The employer-function is as yet at a minimum. Profit is not dependent on reducing wages as much as increasing prices. Indeed, the journeymen are able almost to double their wages without a strike, and the merchants pass the increase along to the customers.

But it is different when the merchant reaches out for wholesale orders. Now he adds heavy expenses for solicitation and transportation. He adds a store room and a larger stock of goods. He holds the stock a longer time and he gives long and perilous credits. At the same time he meets competitors from other centers of manufacture, and can not pass along his increased expenses. Consequently the wage-bargain assumes importance, and the employer-function comes to the front. Wages are reduced by the merchant as employer on work destined for the wholesale market. The conflict of capital and labor begins.

Before we can fully appreciate the significance and the economic interpretation of these revolutionizing facts we shall need to consider the succeeding stage, that of the merchant-capitalist.

#### THE UNITED BENEFICIAL SOCIETY OF JOURNEYMEN CORDWAINERS, PHILADELPHIA, 1835

The organizations of masters and journeymen of 1805 continued more or less until 1835. Then we are aware that a new and more revolutionary stage of the industry has been ushered in. This time it is the merchant-capitalist, who subdues both the master and the journeyman through his control of the new wide-spread market of the south and the west. We read of his coming

in the "Address to the Journeymen Cordwainers of the City and County of Philadelphia," issued by the two hundred members of the "United Beneficial Society of Journeymen Cordwainers."<sup>82</sup> This organization took the lead in bringing together the several trade societies of Philadelphia into the Trades' Union, and in conducting the first general ten-hour strike in this country. The reasons for their aggressiveness may be inferred from their "Address." They recite that the wages of \$2.75 formerly paid for boots have fallen to \$1.12 ½; that their earnings of \$9 to \$10 a week have fallen to \$4 to \$6; that, in order to earn such wages they must work, in many instances, fourteen hours a day; and that other skilled tradesmen are earning \$8 to \$12 a week, often "only working ten hours a day." This depression, they explain, has occurred since "a few years ago." It began with an "unfortunate" coöperative experiment of the journeymen in "opening shops for the manufacture of cheap goods" for the purpose of winning a strike. It was intensified by the appearance of the merchant-capitalist. "The cunning men of the East," they relate, have come to Philadelphia, have invested large capital in the business; have made large quantities of work, have reduced wages, and have compelled the master workmen to abandon the business or to become merchant-capitalists themselves. The reduction of the journeymen's earnings has come about insidiously, "without any positive reduction of our wages," because, by making cheap work, "triple the quantity has to be made to obtain a living." This produces a surplus. Then the capitalists, taking advantage of their necessities, require the journeymen to make the work so far superior that it comes "into competition

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<sup>82</sup> *Pennsylvanian*, April 4, 1835.

with first-rate work." That is to say, the merchant-capitalist, instead of waiting for orders on wholesale work, stocks up on a speculation in advance of orders, and then uses this surplus stock as a club to force upon the journeymen his standard of a minimum quality on the kind of work for which they had no minimum wage.

The employers, or master cordwainers, are now placed in an ambiguous position. At first they are strongly in sympathy with the journeymen and a large meeting of "ladies' shoe dealers and manufacturers" adopts resolutions endorsing the strike against "the growing encroachments of capital upon labor,"<sup>83</sup> and announcing to the public the necessity of a "trifling advance in the price of shoes." In this respect they were organized as a merchants' association. Nine months later these employers were forced by the exactions of the union and their inability to control the merchant-capitalist, to take the other side of the question and to organize as an employers' association and to make a determined fight against the union.<sup>84</sup>

At this stage of the industry we have reached the market afforded by highway and canal, as well as ocean and river. The banking system has expanded, enabling the capitalist to convert customer's credits into bank credits and to stock up a surplus of goods in advance of actual orders. The market becomes speculative, and the warehouse of the wholesale merchant-master takes the place of the store-room of the retail master. The former master becomes the small manufacturer or contractor selling his product to the wholesale manufacturer, the merchant-capitalist. The latter has a wide range of option in his purchase of goods and consequently in his ability to compel masters and journeymen to compete

<sup>83</sup> *Pennsylvanian*, June 15, 1835.

<sup>84</sup> — *Idem*, March 26, 1836.

severely against each other. He can have his shoes made in distant localities.<sup>35</sup> He can discover new fields for the manufacture of cheap work, and for the first time we read of the competition of convict labor.<sup>36</sup>

The merchant-capitalist has also the option of all the different methods of manufacture and shop organization. He can employ journeymen at his warehouse as cutters, fitters, and pattern makers; he can employ journeymen at their homes to take out material and bring back finished work; but, more characteristic of his methods, he can employ small contractors, the specialized successors of the master cordwainer, who in turn employ one to a dozen journeymen, and by division of labor and "team work" introduce the sweating system.<sup>37</sup>

Through these different methods of manufacture we are able to see how it is that the merchant-capitalist intensifies and even creates the antagonism of "capital and labor." He does this by forcing the separation of functions and classes a step further than it had been forced in the wholesale-order stage. First, he takes away from the retail merchant his wholesale-order business. He buys and sells in large quantities; he assembles the cheap products of prison labor, distant localities, and sweatshops; he informs himself of markets and beats down the charges for transportation — thus he takes to himself the wholesale business and leaves to the merchant the retail trade.

Second, he drives off from the retail merchant his

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<sup>35</sup> *Pennsylvanian*, June 20, 1835.

<sup>36</sup> — *Idem*, Sept. 5, 1835.

<sup>37</sup> The term "manufactory," as distinguished from "factory," occurs in the merchant-capitalist stage to indicate the combined warehouse and place of employment where material is prepared to be taken out by journeymen or contractors. It is the "inside shop" of the wholesale or ready-made clothing trade, the contractors' shops being known as "outside shops."

employer-function. The retail merchant can no longer afford to employ journeymen on "shop" work, because he can purchase more cheaply of the merchant-capitalist. The cordwainers in their "Address," speak of the inroads of the merchant-capitalist on the retail shops and the elimination of those who had served an apprenticeship to the business.<sup>88</sup>

Thus the merchant-capitalist strips the former merchant-master both of his market and his journeymen. The wholesale market he takes to himself; the journeymen he hands over to a specialist in wage-bargaining. This specialist is no longer known as "master" — he takes the name of "boss"<sup>89</sup> or employer. He is partly a workman, having come up through the trade, like the master, and continuing to work alongside his men. He is an employer without capital, for he rents his workshop, and the merchant-capitalist owns the raw material and the journeymen own the tools. His profits are not those of the capitalist, neither do they proceed from his ability as a merchant, since the contract prices he gets are dictated by the merchant-capitalist. His profits come solely out of wages and work. He organizes his workmen in teams, with the work subdivided in order to lessen dependence on skill and to increase speed of output. He plays the less skilled against the more skilled, the speedy against the slow, and reduces wages while enhancing exertion. His profits are "sweated" out of labor, his shop is the "sweatshop," he the "sweater."

Thus the merchant-capitalist, with his wide-spread, wholesale speculative market, completes the separation

\* <sup>88</sup> *Pennsylvanian*, April 4, 1835.

<sup>89</sup> The first use that I have found of the Dutch word "bos," meaning manager of a group of workmen, is in the organ of the New York Trades' Union, *The Man*, 1832, vol. vi.

and specializes the functions of the former homogeneous craftman. The merchant-function, which was the first to split off from the others, is now itself separated into three parts—custom merchant, retail merchant, wholesale merchant—corresponding to the three levels of market competition. The journeyman-function is now segregated on two levels of competition, the higher level of custom work and the lower level menaced by prison and sweatshop work. The employer-function, the last to split off, makes its first appearance as a separate factor on the lowest level of market competition. Evidently the wide extension of the market in the hands of the merchant-capitalist is a cataclysm in the position of the journeyman. By a desperate effort of organization he struggles to raise himself back to his original level. His merchant employers sympathize with him and endeavor to pass over to their customers his just demand for a higher wage. But they soon are crushed between the level of prices and the level of wages. From the position of a merchants' association striving to hold up prices, they shift to that of an employers' association endeavoring to keep down wages. The result of these struggles of protective organizations will appear when we analyze more closely the economic forces under which they operate. These forces turn on the nature of the bargain, the period and risk of investment, and the level of the competitive menace.

1. The nature of the bargain:

We have to do with two classes of bargains, the wage-bargain and the price-bargain. Each is affected by the increasing distance of the ultimate purchaser, the actual consumer, from the worker, the manual producer. In the primitive "bespoke" or custom-order stage, the market is direct and immediate. The producer is the

seller to the consumer. The work is priced by means of a separate bargain for each article. The price-bargain is made before the work is done. The customer pays according to the quality; and if he desires an improved quality, he stands the increased price; or, if the producers are able to prevent the marketing of an inferior quality, he pays the price of the quality supplied. Hence an increase of wages is shifted directly to the purchaser. The wage-bargain and the price-bargain are identical.

In the retail-shop stage, the producer is removed one step from the ultimate purchaser. The merchant intervenes as a price-bargainer. This bargain is made after the work is done. The purchasers are now separated into two classes, those who are particular about quality and who adhere to the custom-order bargain, and those who are particular about price and who pass on to the "shop" bargain. To the latter is transferred a certain advantage, and the merchant is less able to shift upon them an increase in wages. The wage-bargain is made for a stock of shoes rather than an individual purchaser, and the goods are to be sold with reference to price rather than quality and fit.

In the wholesale-order stage the market is removed a second step. There are now two price-bargains that intervene between the worker and the market, one between the wholesaler and retailer, and one between retailer and consumer. The wholesale price-bargain is indeed made before the work is done, and to that extent the wages, if previously known, can be shifted. But the retailer, as shown above, is himself restricted in his ability to shift an increase upon the purchaser, and he is more concerned than they as to price because his profit turns thereon, while he is concerned with quality only

indirectly as their representative and not directly as the actual user. Consequently the wholesale merchant is less able than the retail merchant to shift his wages. Of course, if an increase in wages is demanded after the orders are taken, he is compelled at once to make a fight against the workers. It was the opportunity offered in the wholesale-order stage to take this unfair advantage of the employer that provoked the first bitter struggle of capital and labor in 1806.

The wholesale-speculative stage of 1835 intrudes yet another step on the road from producer to market. The employer is now separated out from both the merchant and the worker, and, besides the wage-bargain we have three price-bargains – the employer-capitalist, capitalist-retailer and retailer-consumer. The second bargain, that of capitalist-retailer is made after the work is done, and it is this that constitutes its speculative character. It transfers the advantage of position to the retailer, just as shop work had transferred the advantage to the consumer. Consequently, the employer, or contractor, the sweatshop “boss,” is now introduced as a specialist in driving the wage-bargain with reference to the increased obstacles in the way of shifting wages along to the ultimate purchaser.

Thus it is that the ever-widening market from the custom-order stage, through the retail-shop and wholesale-order to the wholesale-speculative stage, removes the journeyman more and more from his market, diverts attention to price rather than quality, and shifts the advantage in the series of bargains from the journeymen to the consumers and their intermediaries.

2. The period and risk of investment:

Throughout the four stages here described there have been no changes in the tools of production. The fac-

tory system with its "fixed capital" has not yet appeared, and the only capital invested is "circulating capital" in the form of raw material, finished stock and bills receivable. Upon this circulating capital the owner incurs the threefold expense of interest, risk, and necessary profit. The amount of capital per unit of product remains the same, but the period during which it is locked up is lengthened in proportion as the market area is extended. In the custom-order stage this period is at its minimum; in the retail-shop stage the period is lengthened; in the wholesale-order stage, on account of long credits, the period is at its maximum; in the wholesale-speculative stage the average period is perhaps reduced, but this is more than offset by the increase in the rate of risk. This increase of expense for "waiting" and risk, owing to the lengthening of the period of investment, must either be added to the price paid by the consumer or deducted from the wage paid to the producer. But since the position of purchasers in the price-bargains is improved with the progress of the stages and the multiplication of competitors, the increased expense on account of circulating capital must be met by deductions from the rates of wages. This might not have been necessary if fixed capital had been introduced, bringing with it a greater speed of output at the old amount of earnings. But, in lieu of this cheapening by improved tools of production, the only way of meeting the increased expense of waiting is by reducing the rate of pay on each unit of product. The wholesale market is a market for "future goods" the custom-order market is a market for "present goods." The discount on "future goods" appears therefore as a reduction below the wages paid at the same time on "present goods." "Shop" work, "order" work, and speculative work must be

manufactured at a lower wage-cost than "bespoke" work of the same kind and quality.

3. The level of the competitive menace:

Defining the "marginal producer" as the one with the lowest standard of living and price and quality of work, he is the producer whose competition tends to drag down the level of others toward his own. It is not necessary that he be able actually to supply the entire market or even the greater part of it—his effect on others depends on the extent to which he can be used as a club to intimidate others against standing out for their side of the bargain. He is a menace rather than an actual competitor. Now, the extension of the market for the sale of goods is accompanied by an extension of the field for the production of goods. This extension brings into the competitive area new competitors who are essentially a series of lower marginal producers. The capitalist who can reach out for these low-level producers can use them at will to break down the spirit of resistance of the high-level producers. In the custom-order stage there was but one competitive menace, the shoemaker who made "bad ware." In the retail-shop stage there is added the "advertizer," the "public market," and the auction system. In the wholesale-order stage there is added the foreign producer, and in the wholesale-speculative stage the labor of convicts and sweatshops. Thus the extension of the field of production increases the variety and discovers lower levels of marginal producers, and the merchant-capitalist emerges as the generalissimo, menacing in turn every part of the field from his strategic center.

#### PROTECTIVE ORGANIZATIONS

We have, already in 1806 and 1835, seen the cumulative effect of these three sets of circumstances in drag-

ging down the entire body of workmen. We now proceed to notice the resistance of protective organizations and their ultimate effect in bringing about a segregation of work and workers on noncompeting levels.

This may be seen by following again the movement of wages in Philadelphia from 1789 to 1835 on the different classes of work. Prior to 1792, on common boots, the journeyman's wages were \$1.40 a pair on both bespoke and shop work. In the course of fifteen years the price advanced to \$2.75, and this price was paid for both bespoke and shop work, but a concession of \$0.25 was made on wholesale-order work, bringing that price to \$2.50. In 1835, the price had fallen to \$1.12½ for wholesale work, while retail shop work had dropped out or had come down to the same price as wholesale work, leaving custom work at a higher figure. In the course of this movement, the better class of workmen restricted themselves as much as possible to custom work, and the quality of this kind of work was improved. On the other hand the wholesale-order and wholesale-speculative work tended throughout to fall into the hands of inferior workmen, and this brought about an inferiority in quality. These inferior goods, made by inferior workmen, became more and more a menace to the superior goods and the superior journeymen, both on account of the lower levels of the marginal producers and on account of the smaller demand relatively for the production of superior goods.

Herein was the necessity of protective organizations. In order that these organizations might succeed, it was just as necessary to set up protection against inferior goods as against low wages. In the guild stage of the industry, when the three functions of journeyman, master, and workman were united in one person, the protec-

tion sought was against the "bad ware" made by some of the trade. By "suppressing" those who made bad ware the customers would be compelled to turn to those who were "sufficient" workmen and made good ware. Since the bargain was a separate one for each article, so that the price for the job could be adjusted to the quality before the work was done, nothing more was needed on the part of the guild members for the purpose of "enriching themselves by their trades very much."

But in the later stages of the industry the merchant-function, and afterwards the employer-function, were separated from the journeymen-function. It is the special function of the merchant to watch over and guard the quality of the work, because his bargain with the consumer is an adjustment of the price to the quality demanded. The journeyman's function is simply that of making the kind and quality of goods ordered by the merchant. The merchant, in his function as employer, gives these orders to the journeymen, and consequently, when the employer-function is separated from the journeyman-function, the employer, as the representative of the merchant, attends to the quality of the work. In this way the journeyman has lost control over quality, and is forced to adapt his quality to his price, instead of demanding a price suited to his quality. So, when he forms his protective organization his attention is directed mainly to the compensation side of the bargain. In proportion as the quality of his work depends on his rate of pay he indirectly controls the quality, but the primary purpose of his organization is to control the rate of pay. This he does, first, by demanding the same minimum rate of pay for all market destinations of the same kind of work. It was this demand that forced the alignment of classes, and drove the sympathetic mer-

chant over into the hostile employers' association. The employer could yield if he confined himself to the narrow field of the "bespoke" market, but not if he was menaced by the wider field of the wholesale market. On this account it was possible in the retail-shop stage for the interests of employer and workmen to be harmonious. But the employer could not yield in the merchant-capitalist stage on that part of the field menaced by prison and sweatshop labor. Consequently the outcome of the strikes of 1835 was the differentiation of the market into two non-competing levels, the higher level of custom and high-grade shop work, controlled more or less by the cordwainers' societies for the next twenty-five years, and the lower level of inferior work controlled by prison and sweatshop competition.

#### KNIGHTS OF ST. CRISPIN, 1868

I shall but briefly mention the final steps in the progress of industrial stages. Hitherto the only change requiring notice has been that produced by the extension of the market and by the accompanying credit system. These changes were solely external. The next change is internal. Prior to 1837 there had been scarcely a hundred inventions affecting the tools used by the cordwainer. All of these may be described as "devices" rather than machines. Even as late as 1851 all of the labor in the manufacture of shoes was hand labor. In 1852 the sewing machine was adapted to the making of uppers, but this did not affect the journeyman cordwainer, because the sewing of uppers had been the work of women. Even the flood of inventions that came into use during the decade of the fifties was aids to the journeyman rather than substitutes for his skill. Indeed, some of them probably operated to transfer the work of women to men, for they required greater physi-

cal strength and endurance in order to develop their full capacity. Whether operated by foot power or merely facilitating the work of his hands, they were essentially shop tools and not factory machines. Such were the tin patterns for cutting, the stripper and sole-cutter, adjustable lasts, levelers, skivers, and the machines for heel making, lasting, and sandpapering. Quite different were the pegging machine introduced in 1857, and especially the McKay sole-sewing machine, introduced in 1862. These usurped not only the highest skill of the workman but also his superior physique. The McKay machine did in one hour what the journeyman did in eighty. These machines were quickly followed by others, either by machines newly invented or by old ones newly adapted, but all of them belted up to steam. The factory system, aided by the enormous demand of government for its armies, came suddenly forth, though it required another fifteen years to reach perfection. It was at the middle of this transition period, 1868 to 1872, that the Knights of St. Crispin appeared and flourished beyond anything theretofore known in the history of American organized labor. Its membership mounted to forty thousand or fifty thousand, whereas the next largest unions of the time claimed only ten thousand to twelve thousand. It disappeared as suddenly as it had arisen, a tumultuous, helpless protest against the abuse of machinery. For, it was not the machine itself that the Crispins were organized to resist, but the substitution of "green hands" for journeymen in the operation of the machine. There was but one law which they bound themselves by constitutions, rituals, oaths, and secret confederacy to enforce and to support each other in enforcing—refusal to teach green hands except by consent of the organization. This at least was the ob-

ject of the national organization, but when local unions once were established, they took into their own hands the cure of other ills, and their strikes and lockouts were as various as the variety of shops and factories in which they were employed. For the Knights of St. Crispin were face to face with survivals from all of the preceding stages of industrial evolution, as well as the lusty beginnings of the succeeding stage. They were employed in custom shops, in retail and wholesale-order shops, in the "manufactory" of the merchant-capitalist and the shops of his contractors, in the factories of the newly appearing manufacturer-capitalist. A comparison of the objects of their strikes reveals the overlapping of stages. Their strikes turned directly or indirectly on two issues, resistance to wage reductions and refusal to teach "green hands." The wage strikes took place mainly in the shops of the merchant-capitalist, the "green hand" strikes in the factories.<sup>40</sup> The merchant-capitalist was forced by the competition of the manufacturer, either to become a manufacturer himself, to purchase from the manufacturer, or to cut the wages of his journeymen and the prices paid to his contractors. Neither the journeymen's devices nor his foot-power machines yielded a sufficient increase of output to offset his wage reductions. His aggravation was the more intense in that the wage reductions occurred only on shop work and not on custom work. The anomaly of different prices for the same grade of work, which had showed itself with the extension of markets, was now still more exaggerated and more often experienced, with the competition of factory products. Even prison labor and Chinese labor were not cheap enough to en-

<sup>40</sup> For the detailed study upon which this brief summary of the Knights of St. Crispin is based I am indebted to Mr. D. D. Lescohier, member of my research group.

able the merchant-capitalist to compete with the product of green hands and steam power.

The factory succeeded also in producing a quality of work equal or even superior to that produced by the average journeyman. Consequently its leveling agencies reached upwards to all but the topmost of the noncompeting levels on which the journeymen had succeeded in placing themselves, and brought them down eventually to its own factory level. The Grand Lodge of the Knights of St. Crispin was the protest of workmen whose skill of work, quality of product, and protective unions had for a generation preceding saved for themselves the higher levels of the merchant-capitalist system against the underwash of prison and sweatshop competition. It was their protest against the new menace of cheap labor and green hands utilized by the owners of steam power and machinery.

#### THE FACTORY SYSTEM SINCE 1880

The place of the factory system in the evolution of industrial stages is indicated in the appended table. It is enough to note that in the shoe industry it was established in substantially its present form in the early part of the eighties; that detailed piece-work has taken the place of team-work and hand-work; that the last vestige of property-right has left the wage-earner; that the present form of labor organization, the Boot and Shoe Workers' Union, has endeavored, since 1895, to bring together all classes of employees, men and women, in a single industrial union rather than a partial trade union; and that the two classes of protective organizations have asserted their political power for protection against low levels of competition, the merchant-manufacturer against free trade in foreign products, the

wage-earner against foreign immigrants, prison labor, child labor, and long hours of labor.

### PROTECTIVE ORGANIZATIONS AND PROTECTIVE LEGISLATION

The menace of competition may conveniently be described as internal and external. The former arises within the area of the existing market, the latter proceeds from cheap producers abroad. With the ever-widening area of political control these external menaces become internal, and it is this moving frontier that determines the scope and character of protective organization and protective legislation.

Throughout the course of industrial evolution the part played by the merchant stands out as the determining factor. The key to the situation is at all times the price-bargain. It is the merchant who controls both capital and labor. If the merchant has a market he can secure capital. Even the modern "manufacturer" is, first of all, the merchant. The "conflict of capital and labor" is a conflict of market and labor, of merchant and wage-earner, of prices and wages. With the extension of the market the merchant-function is the first to separate off, unless prevented by guild or other regulations, and with each further extension the separation is greater. Just as the first "masters' society" of 1789 was really a retail merchants' association, so the modern "manufacturers' association" is a price-regarding association. Capital follows the merchant, and the manufacturers' protective organization is an organization to protect capital by protecting prices. When the extension of the market provokes the conflict of prices and wages, the wage-earners resort to independent protective policies. Then the manufacturer turns, for the

time, from the market and faces the workman. His "employers' association" is wholly different in method, object, social significance, and usually in personnel, from his "manufacturers' association."<sup>41</sup>

The conflict is ultimately one between the interests of the consumer and the interests of the producer. Whenever the consumer as such is in control, he favors the marginal producer, for through him he wields the club that threatens the other producers. Consequently the producers resort either to private organizations equipped with coercive weapons to suppress their menacing competitor, or else they seek to persuade or compel the government to suppress him. In this way the contest of classes or interests enters the field of politics, and the laws of the land and even the very framework of government are the outcome of a struggle both to extend markets and to ward off their menace.

In the early stages the agricultural, as distinguished from the "industrial" interests, are in control, and they stand to the shoemaker as consumers. Consequently, if the industrial interests secure protection, they must do it by carving out a jurisdiction of their own enfranchised with political immunities and self-governing organizations. In this struggle did the guilds of Europe rid themselves of feudal agriculture. But in colonial America only the soft petition of the Boston

<sup>41</sup> The merchant and employer functions appear throughout different industrial stages and industries under different names, as follows:

Merchant	{	Master Workman
		Retail Master
		Wholesale Manufacturer
		Merchant-capitalist
		Manufacturer-capitalist
Employer	{	Manufacturer
		Master Workman
		Contractor
		Manufacturer

shoemakers and coopers in 1648 shows the high water mark of the guild. Here protection was grudgingly granted against the internal menace of bad ware and itinerant cobblers. In later times, a manufacturing colony, like Pennsylvania, enacted protective tariffs against external menace, and in 1787 the commercial and manufacturing interests, now reaching out for wholesale trade, secured in the federal constitution the political instrument of their mercantile aspirations. Forthwith, as we have seen, the shoemakers of Philadelphia experienced the stimulus of this extension of markets and entered the wholesale-order stage of their industry. This was true, not only of the shoe industry but of many other industries, all of which exhibited in the last decade of the eighteenth and the first decade of the nineteenth centuries, a remarkable struggle for wholesale trade. At once what had been an external menace now became internal on this wider and lower level of competition, resulting in the separation and struggle of classes. The wage-class began its long contest for the political immunity of a private organization to suppress the "scab" in his many forms of nonunionist, sweatshop worker, green hand, Chinaman, and immigrant. But, prior to the merchant-capitalist stage, this separation of labor from merchant was sporadic and reconcilable. The employer, as such, with his specialized wage-bargain, had only occasionally appeared. Merchant and journeyman were at one in their effort to protect the price bargain. Together they joined in their century-long effort, ever more and more successful to use the federal constitution for the suppression of the cheap ware of the foreign producer. But, after the merchant-capitalist period and its segregation of the wage-earner, the slogan of the protective tariff became

protection for labor, where formerly it had been protection for capital. Eventually, with the further separation of labor under its own leaders, protection took the additional form of suppressing the Chinaman and the alien contract-laborer. Turning to the state governments, labor has summoned its political strength for the suppression of the internal menace of long hours, prison labor, child and women labor. And finally, where neither politics nor organization suffice to limit the menace of competition, both "manufacturers" and workmen in the shoe trade and other trades strive to raise themselves above its level by cultivating the good will of the consumers, the former by his trade-mark, the latter by the union label.

Thus have American shoemakers epitomized American industrial history. Common to all industries is the historical extension of markets. Variations of form, factors, and rates of progress change the picture but not the vital force. The shoemakers have pioneered and left legible records. Their career is "interpretative," if not typical.

JOHN R. COMMONS.



I. PHILADELPHIA CORDWAINERS – 1806  
COMMONWEALTH *v.* PULLIS

[Title page] THE TRIAL OF THE BOOT & SHOEMAKERS  
OF PHILADELPHIA, ON AN INDICTMENT FOR A COMBINA-  
TION AND CONSPIRACY TO RAISE THEIR WAGES. Taken  
in Shorthand, by Thomas Lloyd, Philadelphia: printed  
by B. Graves, No. 40, North Fourth street, for T.  
Lloyd, and B. Graves, 1806.

TO THOMAS M'KEAN, Governor, and  
THE GENERAL ASSEMBLY OF PENNSYLVANIA,

Is dedicated the report of the most interesting law  
case, which has occurred in this state since our revolu-  
tion . . . with the hope of attracting their particular  
attention, at the next meeting of the Legislature.

“It is better that the law be known and certain, than  
that it be right.” With respect, I am, fellow citizens,  
your most obedient,  
THOMAS LLOYD.

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THE TRIAL OF THE JOURNEYMEN BOOT & SHOE-  
MAKERS OF PHILADELPHIA

[1] MAYOR'S COURT. *Present*, Levy, *recorder*; Innskeep, *mayor*; and Pettit, Douglass, and Carswell, *aldermen*. The Commonwealth against George Pullis, *et al.*

THE JURY. 1. Isaac Watkins, *innkeeper*; 2. Wm. Allibone, *merchant*; 3. James Flamand, *grocer*; 4. John Kunius, *hatter*; 5. W. Henderson, *tobacconist*; 6. D. Lowndes, *watchmaker*; 7. John Livzey, *taylor*; 8. S. Kennedy, *inkeeper*; 9. John Clark, *tavern-keeper*; 10. Thos. M'Clean, *bottler*; 11. James Eccles, *grocer*; 12. Neil Sweeney, *grocer*. Jonathan Wharton, *shoemaker*, was drawn as one of the jurors, but objected to on account of his occupation.

COUNSEL FOR THE PROSECUTION. Jared Ingersol and Joseph Hopkinson.

COUNSEL FOR THE DEFENDANTS. Caesar A. Rodney and Walter Franklin.

MR. HOPKINSON. May it please the court. The bill of indictment exhibited before you, and which you, gentlemen of the jury, are sworn to try, charges an offence not of every day's production; in order that you may fully comprehend the extent of the charges against the defendants; and although the bill is long, I will read the whole of it to you, for your information. It is in these words:

[2] Be It Remembered, that at mayor's court held at Philadelphia, for the city of Philadelphia, before John Innskeep, Esq., mayor, Moses Levy, Esq., recorder, and Philip Wager, Esq., Andrew Pettit, Esq., and Abraham Shoemaker, Esq., aldermen of the said city, on Thursday the second day of January in the year of our Lord one thousand eight hundred and six, by the

oaths or affirmations of David C. Claypoole, foreman, John Bohlen, Andrew Kennedy, Joseph Price, Joseph Simmons, John Wistar, Jacob Christler, Joseph Worrell, James Crukshank, Samuel Richards, John Markland, Jacob Schreiner, Martin Hartley, Augustus Friecke, and James Cameron, good and lawful men of the said city, then and there sworn, or affirmed, and charged to enquire for the said city: it is presented that the annexed bill of indictment is true.

January Sessions, 1806. City of Philadelphia, ss.

The grand inquest of the commonwealth of Pennsylvania, inquiring for the city of Philadelphia upon their oaths and affirmations, respectively, do present that George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, late of the city of Philadelphia, aforesaid, being artificers, workmen and journeymen in the art and occupation of a cordwainer, and not being content to work, and labour in that art and occupation, at the usual prices and rates for which they and other artificers workmen and journeymen, in the same art and occupation were used and accustomed to work and labour; but contriving, and intending unjustly and oppressively, to increase and augment the prices and rates usually paid and allowed to them and other artificers, workmen, and journeymen, in the said art, and occupation, and unjustly to exact and procure great sums of money, for their work and labour, in the said art and occupation, on the first day of November in the year of our Lord one thousand eight hundred and five, with force and arms did combine, conspire, confederate, and unlawfully agree together, at the city of Philadelphia, aforesaid, that they, the said George Pullis, Peter Pollen, John Harket, John Hepburn,

Underl Barnes, John Dubois, [3] George Keimer, and George Snyder, or any of them would not, nor should work and labour, in the said art and occupation, but at certain large prices and rates, which they the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, then and there insisted on being paid, for their future work and labour in the said art and occupation, for and upon, and in respect of certain particular sorts of work and labour in the said art and occupation, that is to say: for making fancy boots, the sum of five dollars for making back strap boots the sum of four dollars, for making long boots the sum of three dollars, for making cossacks the sum of three dollars, and for making bootees the sum of three dollars, which, said several rates and prices which were so as aforesaid, fixed and insisted on by the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, were at the time of their being so fixed and insisted on by them the said, George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, more than the several and respective prices and rates, which had been, and which were then used and accustomed to be paid and allowed to them, the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, and other artificers, workmen, and journeymen employed in the said art and occupation of a cordwainer, for and upon and in respect of the said particulars and respective sorts of work and labour, for and upon and in respect of which the same were so respectively fixed and insisted on by the said George

Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, as aforesaid, to the damage, injury, and prejudice, of the masters employing them in the said art and occupation, of a cordwainer and of the citizens of the commonwealth generally, and to the great damage and prejudice of other artificers, and journeymen, in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

[4] 2. And the inquest aforesaid upon their oaths, and affirmations aforesaid, do further present that the said George Pullis [*et al.*] being artificers, workmen, and journeymen, in the said art and occupation of a cordwainer, and not being contented to work and labour, in that art, and occupation, at the usual prices and rates, for which they and other artificers, workmen, and journeymen, in the same art and occupation, were used and accustomed to work and labour, but contriving and intending, unjustly and oppressively to increase and augment the prices, and rates usually paid, and allowed to them and other artificers, workmen, and journeymen, in the said art and occupation, and unjustly to exact and procure great sums of money for their work and labour, on the said first day of November one thousand eight hundred and five, with force, and arms, at the city of Philadelphia, aforesaid, unlawfully did combine, conspire, confederate, and agree together, that they the said George Pullis [*et al.*], or any of them would not, nor should, and also that they the said George Pullis [*et al.*], and each, and every of them should and would endeavour to prevent by threats, menaces, and other unlawful means, other artificers, workmen, and journeymen, in the said art and occupa-

tion, from working and labouring in the said art and occupation, but at certain large prices, and rates which they the said George Pullis [*et al.*], then and there fixed and insisted on being paid for their future work and labour, in the said art and occupation, for and upon and in respect of certain and particular sorts of work, and labour in the said art and occupation, that is to say for making fancy boots the sum of five dollars for making back strap boots the sum of four dollars, for making long boots the sum of three dollars, for making cosacks the sum of three dollars, and for making bootees the sum of three dollars, which said several rates and prices, which were so as [5] last aforesaid, fixed and insisted on by the said George Pullis [*et al.*], were more than the several, and respective rates and prices, which had been, and which were used and accustomed, to be paid, and allowed to them the said George Pullis [*et al.*], and other artificers, workmen, and labourers employed in the said art and occupation of a cordwainer, for and upon and in respect of the said several and respective sorts of labour, for upon and respect of which the same were so respectively fixed and insisted on by the said George Pullis [*et al.*], as last aforesaid to the great damage, injury and prejudice of the masters employing them in the said art and occupation of a cordwainer . . . and of the citizens generally of the commonwealth, and to the great damage and prejudice of others, artificers and journeymen, in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

3. And the inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that, the said George Pullis [*et al.*], being artificers, workmen and

journeymen in the said art and occupation of a cordwainer, on the same day and year aforesaid, at the city of Philadelphia aforesaid, unlawfully perniciously,<sup>42</sup> and deceitfully designing and intending to form and unite themselves into a club and combination, and to make and ordain unlawful and arbitrary bye laws, rules, and orders amongst themselves, and thereby to govern themselves and other artificers, workmen and journeymen in the art and occupation of a cordwainer, and unlawfully and unjustly to exact great sums of money by means thereof on the day and year aforesaid, at the city of Philadelphia aforesaid, did unlawfully assemble and meet together, [6] and being so unlawfully assembled and met together, did then and there unjustly and corruptly conspire, combine, confederate, and agree together that none of them the said conspirators, after the said first day of November, one thousand eight hundred and five, would work for any master or person whatever, who should employ any artificer, workman or journeyman, in the said art and occupation of a cordwainer, or other person who should thereafter infringe or break any or either of the said unlawful rules, orders or bye laws, and that they would by threats and menaces and other injuries, prevent any other workmen and journeymen from working for such master, and the said George Pullis [*et al.*], in pursuance of the said unlawful conspiracy, combination, and agreement, refused to work at the usual rates and prices given to artificers, workmen and journeymen in the said art and occupation of a cordwainer, and still do, and each of them doth refuse to work and labour at the usual rates and prices accustomed to be given to them, the said George pullis [*et al.*], and other artificers, workmen and jour-

<sup>42</sup> Query, The legal intendment of that word.

neymen in the said art and occupation of a cordwainer, to the great damage and prejudice of the masters employing them in the said art and occupation of a cordwainer, and of the citizens of the commonwealth generally, and to the great damage and prejudice of other artificers and journeymen in the said art and occupation of cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

For the attorney general.—JOS. REED.

Witnesses annexed to the bill of Indictment. Lewis Ryan, sworn, John Bedford, sworn, Job Harrison, sworn, James Comyns, sworn, Anthony Bennet, sworn, Andrew Dunlap, sworn, George Kemble, affirmed.

[7] This prosecution has been commenced, not from any private pique, or personal resentment, but solely, with a view, to promote the common good of the community: and to prevent in future the pernicious combinations, of misguided men, to effect purposes not only injurious to themselves, but mischievous to society. Yet infinite pains have been taken to represent this prosecution, as founded in very improper motives. Not only in private conversation, and in public taverns, but even the press has been employed in the work of misrepresentations.

The newspaper called the *Aurora*, has teemed with false representations and statements of this transaction; and the most insolent abuse of the parties, who have brought it before this tribunal, with a view (if not with the declared intention), to poison the public mind, and obstruct the pure streams of justice flowing from the established courts of law. Yet we trust, we shall be enabled to counteract the nefarious effects, the publications alluded to were calculated to produce, by a fair

and candid exposure of all the circumstances. When the true nature of the case shall be explained, and the plain narrative of the facts, shall be laid before you gentlemen of the jury, we feel confident that you will not be biased by newspaper attempts, to delude and mislead you. It has been a common observation that newspaper accounts, of the proceedings in our courts of law, are filled with mistakes and misrepresentations, the publications alluded to are in conformity to this general character, and marks the ignorance or wickedness which gave them birth.

Let it be well understood that the present action, is not intended to introduce the doctrine, that a man is not at liberty to fix any price whatsoever upon his own labour; we disclaim the idea, in the most unqualified terms, we declare that every man, has a right to fix any price upon his commodities or his labour which he deems proper. We have no design to prevent him. We disclaim any such design. If any one of the defendants, had thought proper to charge \$100 for making a pair of boots, nobody would interfere, if he could get his employer to give it, or could compel the payment. He would have a legal right to do so, our complaint is not of that kind.

[8] Our position is, that no man is at liberty to combine, conspire, confederate, and unlawfully agree to regulate the whole body of workmen in the city. The defendants are not indicted for regulating their own individual wages, but for undertaking by a combination, to regulate the price of the labour of others as well as their own.

It must be known to you, that every society of people are affected by such private confederacies: that they are injurious to the public good and against the public

interest. The law therefore forbids conspiracies of every kind which puts in jeopardy the interest and well being of the community; what may be lawful in an individual, may be criminal in a number of individuals combined, with a view to carry it into effect. The law does not permit any body of men to conspire or to undertake to do any act injurious to the general welfare. An act of conspiracy is an offence against the laws of this country, and that is the charge brought against their defendants, in the first count of the indictment.

(Mr. H. read the first count and then proceeded.)

It is here stated that this confederacy, was, not only injurious to the community generally, but also, to other artificers and journeymen cordwainers, it is not alleged to be against the masters, for they are in no wise concerned, it is against such part of the fellow craft as do not wish to submit to the tyranny of the few.

(Mr. H. here read the remainder of the indictment.)

You will also please to observe that this body of journeymen are not an incorporated society whatever may have been represented out of doors on that head; neither are they a society instituted for benevolent purposes. But merely a society for compelling by the most arbitrary and malignant means, the whole body of the journeymen to submit to their rules and regulations; it is not confined even to the members of the society, it reaches every individual of the trade, whether journeymen or master. It will appear, from the evidence to be adduced before you, to spread to an extent of which [9] you cannot as yet form any idea. You will find that they not only determine the price of labour for themselves, but compel every one to demand that price and receive no other, they refuse to hold communion with any person who shall disobey there man-

dates, in fine, they regulate the whole trade under the most dreadful pains and penalties, such I believe as never was heard of in this or any other civilized country.

There may be a number of young single-men, who may stand out for the wages required, but there are others with families who cannot subsist without work; these men are compelled to abstain from their employments, and are reduced to the extreme of misery, by the tyranny of the others, we shall shew you that some journeymen, with families, have been forbid to work at prices with which they were perfectly satisfied, and thereby been brought into deep distress.

We shall shew you the nature of the pains and penalties they affix to disobedience; we shall also shew the mode by which they compel men to join their society, and the fetters with which they afterwards bind them. A journeyman arriving from Europe, or any part of the United States. An apprentice who has served . . . his time, must join the association, or be shut out from every shop in the city, if he presumes to work at his own price. Nay every master shoemaker, must decline to employ such journeyman or his shop will be abandoned, by all the other workmen. A master who employs fifteen, or twenty hands is called upon to discharge the journeyman who is not a member of the body, if he refuses they all leave him whatever may be the situation of his business: this compulsion from its nature seldom fails. If the master discharges the non conformists, and he gets employed at another shop, the body pursue him, and order the new master to drive him away, and threaten in case of refusal that they will draw off all the members of the society, and so on, until the persecuted man either joins their body or is driven from

the city. The injury to the community is a very serious evil and demands at your hands to be redressed.

This is the chief charge in the indictment; and you now see that the action is instituted to maintain the cause of liberty and repress that of licentiousness. It is to secure [10] the rights of each individual to obtain and enjoy the price he fixes upon his own labour.

In the progress of this case the Evidence, the principles on which the prosecution is conducted, and the law arising thereon, will respectively be laid before you; and you will ultimately decide for the prosecution or the defendants as shall in your judgment comport with the justice of the case. I have thought it necessary to say thus much that you might not suppose, we are attempting to deprive any man of his constitutional rights and priviledges as has been represented. I shall now proceed to call witnesses to establish the facts I have stated.

Job Harrison, *sworn*.

*Question*, by Mr. Hopkinson. Are you a journeyman shoemaker? *A.* Yes.

*Q.* Do you know whether the journeymen cordwainers in this city, are associated together for particular purposes, and do you belong to them? *A.* Yes they are formed into a society, and I belong to them.

*Q.* Does George Pullis, belong to the association? *A.* Yes.

*Q.* Does P. Pollen? *A.* I do not know that he does.

*Q.* Does Harket? *A.* Yes.

*Q.* Does Hepburn? *A.* I don't know him by name.

*Q.* Is Barnes one? *A.* Yes.

*Q.* Are Dubois and Keimer, members? *A.* Yes.

*Q.* Is George Snyder? *A.* I do not know.

[11] MR. HOPKINSON. Please to go on and explain

what you know of the objects of that association and state such facts as you know of their conduct.

JOB HARRISON. The objects as far as I know, as a Shoemaker of the society, was to associate together for the purpose of supporting the present wages, and what wages they might see proper to ask in future.

Q. Did you join the association of you own free will, or were you compelled to join it? A. I was notified that there was such a society, when in 1794 I came into this country, from England: I had tarried some considerable time in the city before I removed up to this side of Germantown at the place of———the Calico printer. The wages were then at that time 6s. a pair to the journeymen: I tarried at Germantown six or seven weeks; during which time I worked for Mr. Bedford, one time when I came in, (for I used to fetch in my work once a week), it was on Saturday, (for I always came in on Saturday), Mr. Bedford, told me that the wages had been raised, to I forget whether a dollar a pair or something under, but, he gave me what they were raised to, for my work. At this time I knew none of the journeymen, in the city, nor that there was any body of them associated. In the course of a little time I came into the city again, and I was told the wages were raised again; if they were not at the first time raised to a dollar, they were raised immediately after, and he told me of this rise again, and gave me the wages that had been asked. In a few weeks, some of the journeymen, who knew me, called upon me and requested me to join the body. It might be five or six weeks after the rise of wages.

Q. Do you know who they were that called on you? A. I do not, I believe they knew me, when I did not know them, for I had been at the shop, several times

they notified me that it was my duty to come to the body. I told them I knew nothing about the body, I did not know there was such a thing. They told me if I did not come to the body, I was liable to be scabb'd; I did not know at that time what it was to be scabb'd; [12] but some of the men explained it, and I told them that I was willing to be as good a member of their body as any other man.

MR. RECORDER. *Q.* How did they explain themselves? *A.* Their meaning was, that if I did not join the body, no man would set upon the seat where I worked; that they would neither board or work where I was unless I joined. 'By a seat I mean they would not work in the same shop, nor board or lodge in the same house, nor would they work at all for the same employer. I was a man with a large family, and wished to conform to the laws and be a good member. A notification came shortly after from the Secretary, that I must attend the body-meeting at a certain time, and I accordingly did so. And then I learned the nature of the institution. I had another notification after, which was signed by, both the chairman and secretary but I have not kept it.

MR. HOPKINSON. *Q.* Did you ever fall under the displeasure of the body, and what was their conduct towards you? *A.* After I had become a member I was as willing as any one to support the body. I had been with them a considerable time when in the year 1799 or 98 I do not recollect exactly . . . but I should first observe, that, I always worked upon shoes, for Mr. Bedford, I had not long worked for him before I got on to light dress-shoes. He told me if he could make some light dress-shoes after the London fashion, he would pay extra wages for them. I tried to imitate the London fine shoes, but I could not imitate them ex-

actly, yet I did the best I could, and he told me that they deserved six pence more than the common wages; as I continued on this light work my hand got better in, and he told me if I would side line them with silk, he would give me six pence a pair more; this was a shilling advance. He told me if I would endeavour to make them lighter still, so as to come nearer to the London dress-shoes, accordingly I tried and found that I could now imitate them tolerably well, and he was satisfied to give me 9s. a pair, if I did them no worse.

[13] In a little time there came a turn-out to raise the wages upon boots; knowing I had my full terms for my own work and that I had no interest in the turn-out upon boots, that I have everything to lose but nothing to gain; I remonstrated with the society at large, of which I was still a member. I stated that they ought not to include me with them, in the turn-out, as I worked altogether upon shoes, and their measure, was, to raise the wages on boots. I mentioned that I had a sick wife and a large young family, and that, I knew I was not able to stand it: they would grant me no quarters at all, but I must turn-out. All the remonstrances I could make were of no use. I must turn-out; unless my employer would pay their price for making boots I must refuse to make shoes. At that time I was from hand to mouth, and in debt, owing to the sickness of my family, and market work was only from 3s. to 3s. 6d. per pair. I concluded at that time I would turn a scab, unknown to them, and I would continue my work and not let them know of it. I did not desire more wages than I then got, more could not be looked for, nor more could not be given. I had a neighbor, who I was acquainted with, and thought a good deal of, I knew I could not deceive him, for he knew Bedford's work,

as well as I did myself, and he was frequently to see me, and must have observed the work I was upon. He was a shoemaker and upon the turn-out. I said to him Swain, you know my circumstances, my family must perish, or go to the bettering house, unless I continue my work. He said he knew my case was desperate, but a man had better make any sacrifice than turn a scab at that time. I reasoned with him as I had done to the body, that my turning out would be of no advantage to them, but certain ruin to myself, but he was as unreasonable as they had been, and would take no apology for my conduct.

MR. RECORDER. How many persons were at the meeting when you remonstrated against being compelled to join the turnout in 1799? [14] *A.* Perhaps one hundred. The body was composed of upwards of one hundred. The names were called over but the number present are not mentioned. John M'Curdy, John Waltar, and one Cooke, were a tramping committee, that I know . . . their business was to watch the Jers that they did not scab it. They go round every day, to see that the Jers are honest to the cause; I was a scab myself, yet I was upon the committee to go round and watch other scabs, but then the members did not know I was a scab at the time. And we were obliged to serve on this Committee or pay a fine, we had no compensation that I recollect, we served for the good of the cause and I think the tramping committee were changed every day by the body. I had the extent of my wages during the whole time. I am speaking of the turn-out in 1799. When the tramping committee came round they went to Swain, and he informed them that I was scabbing it: to deceive them I had got a side of leather and a skin or two to make shoes of, as a pretence of working

for myself, as they must know I should be in want of money; but M'Curdy was too deep for me, for he knew Bedford's work, they pinned me so close that I could not get over it, and was forced to confess, at last I got angry and ordered them out of the house and told them I would scab it whatever consequences might follow. The body after this thought it requisite to take one man instead of three for the tramping committee and they paid him: they took one Nelson for the business. He had nobody but himself when he called upon me the day after. I told him I was scabbing of it, he replied I don't believe you. Depend upon it I am, he still seemed as if he did not believe me, he went away and called again the next day. I said so you will come again for all I tell you I am scabbing of it, and depend upon it I am: he went away and called the third day and he might see if he was not determined to doubt . . . for in Bedford's shoes there is the name of the customer, if it is bespoke work, or if it is shop work there is the number of the pair. I attended the meeting when Dobbin's case came before the body, which so hurt my feelings that I was determined ever after to do that openly which I had done before secretly. Dobbin was in great distress, he [15] had lost his wife, and had a large family of small children to maintain; he was working at soldiers work for his employer, but was ordered to stop till the meeting: at the meeting he solicited to be allowed to work, as he could not otherwise support his children, the motion was rejected.

Mr. Rodney interrupted and enquired if this matter was relative to the present case which was an action against the defendant for an occurrence that took place last fall.

Mr. Hopkinson said if they let the witness proceed,

the relation would soon be perceived. Was Dubois a member when Dobbins asked leave to work?

MR. RODNEY. What does that question go to?

JOB HARRISON. Dubois was a member, and when Dobbins had been refused leave to work, it was added that, he should not even make candle boxes for Case, his employer, because he would not pay the price required; Dobbins appeared in great distress, he cried and it almost broke my heart. I said then to several members, now I will turn a scab, at the same time I was a scab but they did not know it. As soon as the turn-out was over, in which the journeymen succeeded, they notified Mr. Bedford that he must discharge his scabs, or they would not work for him; they knew S. Logan and me to be scabs and unless we were discharged from our seats none of the body would work for him. Mr. Bedford said he would do no such thing, he would never discharge his men whilst he was satisfied with their conduct. When I came in he told me of the notification, and I expected he would knock me off, and I was afraid if he dismissed me that I could not get another seat in the city, for the next employer would be under the necessity of discharging me likewise. He told me I need not make myself uneasy for [16] he would not discharge me, let the consequence be what it might, that we should sink or swim together, if they drive me out of the trade I will turn my shop into a dry good store. In a little time after this his shop was scabbed, and all the members of the body left him except Logan and myself and two or three more, they did not care about the others so as they could punish Logan and me. Mr. Bedford said he did not know what to do on the occasion, for at that time he employed from fifteen to twenty and twenty-four journeymen.

One Saturday night they had all left him, when he said to Logan and me. I don't know what the devil I am to do, they will ruin me in the end, for they care for nobody else. I wish you would go to the body and pay a fine if not very large, in order to set the shop free once more. Logan and me consulted, and agreed together, that if the body would accept a fine, as far as eight dollars, we would pay it and make an acknowledgment, but we pledged our words that we would not pay any more, by doing this we should liberate the shop and ourselves, and become again members of the body: accordingly at the next meeting we waited on the body, we notified some of the members we were below and wished to have a hearing. Accordingly the body was notified that we were below and wished to know the fine they would lay upon us, in order that we might again become members and liberate the shop; the members told us on their return that the sense of the body had been taken and that they fined me twenty dollars, for being a hypocrite, tho' my work did not belong to what they had been contending for: they fined Logan but eighteen dollars although he was a boot-maker and consequently interested in the event. This decision irritated me worse than ever. It was like throwing coals of fire in my face. However the members returned to the body and told them we were ready to receive their terms if they were merciful and would receive a moderate fine, they reduced me to eighteen dollars, and at length to twelve dollars, but that was too much, they know I am a well wisher to the body but no enemy to myself, when they offered by their deputation to take twelve dollars, Logan and me consulted and offered them eight dollars a piece which, [17] we were willing

to pay, they had no power of attending to this offer without the concurrence of the body and they refused it.

One of the jury asked a question not heard by the Reporter. *A.* I did not think they had a right to sacrifice the interest of the body, for so friendly am I to the institution that if it was broke down to day I would endeavour to raise it up again to-morrow. Logan and myself then came away but told them first we would never offer them eight dollars again. Mr. Bedford's shop was under scab for a year or a year and a half, during this time Logan set up for himself and I was left alone on the seat. I thought to be sure that they would now reach me, that Mr. Bedford would not any longer defend me, as it would be sacrificing himself I felt broken hearted and much cast down, I asked him if he would not be forced to give me up, he told me he would not and I now believe he would have suffered to be driven out of the trade before he would have abandoned me. It lasted in this way for eighteen months, soon after, the last sickness, but one, commenced, I went to Trenton to where Mr. Bedford had removed his shop I think it was in 1802, I became acquainted there with Dempsey the secretary, when I first fell in company with him he would not speak to me because he knew I was a scab, but as I fell often in company with him he could not avoid saying something; and one day he asked me what the devil was the reason I was such a notorious scab. I reasoned with him about the justness on my case and urged every thing I had said before, both as to my own and Dobbin's case, he seemed to be gained over; he was not a member at the time I had been scabbed, all he knew of it was by hearsay, he soon became friendly and he asked me

if he could break the matter to the body whether I would become a member again, I readily agreed for I knew well the difficulty I had been long labouring under, if I once lost my seat at Mr. Bedford's, I should be driven to market work by which I could not make a living. He told me he would try to bring it about, and asked me how much I would pay. I told him I had offered eight dollars and it had been refused, he asked would I give five dollars I said I was [18] not able, but if able I would not, all I will pay shall be some trifling acknowledgment for transgressing the law.

After that I met him in Front Street he asked me again if I would pay five dollars, I told him I cared nothing about it, I will pay nothing but a trifling acknowledgment, tho' I was desirous of getting into the body again, in which case I was determined never to be a refractory member, yet I would not pay a heavy fine. He promised to use his influence that I should pay little or nothing; a few days after two men came to me to require me to attend a meeting on the next body-night; I attended accordingly and a deputation from the body composed of three members of whom Murphy was one, met me and Casey another scab, they went into a private room and after consulting some time, they asked if we were willing to pay eight dollars each. I told them they were making fun of me, and that I would go home about my business. They begged I would not be hasty I did not wish to leave them for I was as willing again to become a member as they could be for me. They asked me if I would pay four dollars in four monthly payments. We agreed to this and then we went to the body, the proposition was put to the vote and carried by a large majority, we agreed to pay it and thereupon became members again. In this transac-

tion I must acknowledge that I cared more for myself than I did for Mr. Bedford, whose shop however thereby became free, I wished it to be so though I must acknowledge that I could get work no where else if Mr. Bedford had turned me off, or I should have been obliged to take such price as he might give me, even if it had been 5s. a pair, but he never offered me less than the full wages nor never docked me of a cent. The money has all been paid eighteen months since, but I felt myself after all but as a scabbed sheep and visit the body as seldom as possible missing three nights out of four; for I know they are not pleased with me to this hour.

I had not been a member more than a year when last fall there was a turn-out again. I was notified to attend and I must either attend or pay a smart fine, I attended, there was much discussion and debate, many of the best workmen were satisfied with their wages and opposed [19] the turn-out, it was just after the fever had subsided and the journeymen were generally scarce of money. Mr. Dubois and Gagen were satisfied with the present wages and opposed the turn-out with all their abilities; but on the question, it was carried against them, by a small majority. . . I think about eight or ten. Upon which the rest were to submit, or turn scabs as I did before.

They make no discrimination in the rate of wages between a good and bad workman. A meeting was called for the next night, but as I did not think it could be over-ruled, I did not go. Mr. Gagen again, I understood, used all his endeavours to get rid of the turn-out, but the majority was against him. A notification was then directed to be sent to the employers, and two men were appointed to each shop to notice them accordingly. When Mr. Bedford was first called on, he

said he would give the price, and if they asked the full price of the boots he would sooner give it than be reduced to the perplexity he had suffered before . . . said he, I will have no more bother about it, for I have had enough before. After that some of the employers met together to consider if they would give it, and determined they would not; whereupon Mr. Bedford changed his mind, and would not give it either. For my own part, I wished the men to get their wages, for if they did not get it I should be half ruined, if required again to turn out; but it could not affect me if the measure was confined to boots alone. . . There was a shoeman near me in the meeting, who asked me to move an advance on shoes: I told him if shoes were raised to 9s. I should not be benefited for I had that price already, but you know it cannot be given only on customers work. If I was to make the motion, the body of bootmakers would soon shut my mouth, by telling me I could not want it as I have 9s. already. Some persons, however, speaking about the price of shoes, others said, what have we to do with you? To which the first replied, then we have nothing to do with you and will pursue our own course.

Sixty persons were pledged to this last turn out: although Dubois and Gagen opposed the turn out, when the employers refused to give the price, they became the leading characters in conducting the business and supporting it. The turn out continued about five [20] or six weeks, during this time I lived by cobbling, for I made but three pair of shoes, and those I had in the house at the time; these three pair I did not carry in till the turn-out was over, because I was determined not to be a scab this time.

(Some noise being heard in court at this moment, Mr.

Recorder asked who it was made that noise. Mr. Ryan, pointing to a person just behind him, said it was him, and on being asked by Mr. Recorder, what the person said, Mr. Ryan replied . . . "A scab is a shelter for lice."

Mr. Recorder directed Mr. Ryan to be sworn, which being done, he declared that he heard George Alcorn say, a scab is a shelter for lice, in a distinct tone of voice, there was some little addition muttered in such a manner that he could not understand it.

After a short consultation on the bench,

Mr. Recorder said, "George Alcorn, for this contempt of court in interrupting a witness, the court fine you ten dollars, and order you to pay the money immediately or be committed." The money was paid immediately.)

MR. RECORDER. The witness will proceed.

JOB HARRISON. I was soon placed in a like awkward predicament to that in which I had been placed before. I had only, as it were, just become a member when a fresh turn-out took place. I attended the shop meeting and stated the hardship of my case. . . I had a wife and six children dependant on the work of my hands for their support, and I could not get half a living by market work. They told me there was money enough in the funds to support those members who wanted support, and they agreed that I should be allowed half a dollar a week for each child, half a dollar a week for my wife, and half a dollar for myself, which brought my compensation to four dollars per week; this was mentioned to me by Dubois.

[21] MR. HOPKINSON. How much could you earn in a week? A. It might average six or seven, sometimes I got nine or ten dollars, but I was not able to

stick equally close at all times. I did some work during this turn out for Mr. Hays, the engraver, perhaps six pair. I mended those of my own family, but the three pair I had of Mr. Bedford I did not take home, I would not go nigh the shop lest it should be thought I turned a scab. Though I did not get half wages, I was obliged to be out every other night, which encreased the expenditure of my money: for I was obliged to go to the meeting or pay a quarter of a dollar, and if I went, it would cost me an elevenpenny bit; so that I was losing little by little all the time. I think I was out of work rather better than six weeks.

*Q.* Did I understand you to be satisfied all this time with the wages you had been accustomed to receive from Mr. Bedford, and yet they compelled you to turn out? *A.* I had as much as any man, and I could not expect more: but they did not compel me to turn out, any other way than by making a scab of me, and I thought I should be a great fool to subject myself to the like inconvenience I had before experienced, or be obliged to pay a heavy fine. I was appointed president of the shop meetings, and attended the others; but during the whole time I kept complaining that they made me no compensation, while they would get their compensation hereafter, by the rise of their wages, and I could not expect a cent advance on mine. At length I received a note from Mr. Bedford, informing me that if I did not turn into work I should hereafter have no more than common wages. I shewed Hays this note, and he advised me to wait a day or two and try if the body would not grant me liberty to go to work; there was no money to compensate me, but they promised to compensate me next Saturday. He asked me how much I wanted? I answered if they would give me twelve

dollars ready money, I would be content to receive it as a full compensation. The next meeting I attended, for I understood they had collected sums of money to meet the expences of this prosecution. I was [22] not admitted into the room, but I notified them I was attending. I stopped some time with Dubois who put a half eagle into my hand, and said he was much obliged for my forbearance, that he would soon give me the rest. Since which I have never spoke to any of them but Mr. Hay. I got twenty dollars of Mr. Bedford on a settlement just before, otherwise I could not have continued to stand the turn-out . . . and ten dollars of that money I lent the body to give Cummings, to prevent him from going to work. I wished and pressed for my compensation although I had money . . . yet they would not give it me, because I would not say I was in absolute want.

The court adjourned till afternoon.

*Eadem die.* Mr. Job Harrison, *cross examined.*

*Q.* When did you become a member of that society?

*A.* Sometime in 1794.

*Q.* Were the present defendants members of the society at the time, or was any one of them then a member? *A.* I remember Mr. Dubois was one, but do not remember any other.

*Q.* You have given an account of some of the articles of the society; I wish you to give an account of the whole of them. *A.* I don't know them, only as they were read from time to time in the meetings.

*Q.* You gave testimony of some. I enquire which you particularly recollect. *A.* I recollect that there is now a particular article which declares, if any man turns scab he shall be fined sixteen dollars. I speak of

the present, for there was a revision of the constitution while I was excluded.

*Q.* What are the objects of the society? *A.* I don't pretend to know all the articles in the books, but I know the object was to support the price of wages, and the scab law was a stimulus to the members to support what they undertook; there must be a stimulus in every society to keep the members to [23] their common engagements. In 1799 there was a turn-out, and I thought the journeymen were entitled to a rise of wages, as every thing else was rising. I did not see any impropriety in the turn-out at that time.

*Q.* Are you sure that the object of the turn-out at the time you speak of, was an advance of wages? *A.* I am not sure, but I rather believe it was.

(A little disturbance took place among the audience, who were numerous, but being settled after a short examination into the cause by the court, the trial proceeded.)

Job Harrison continued. This I knew before the first turn out; Mr. Bedford had raised my wages to 9s. a pair for shoes, when the settled price was 7s. 6d.: some had 8s: some got but five elevenpenny bits. There is a difference between order work, which is the lowest price, and shop and bespoke work; one will sell only for one dollar and eighty cents, the other for two dollars and seventy-five cents, as I have heard say.

*Q.* Did any other person make bespoke work of the same kind for Mr. Bedford? *A.* I do not know that they did, it was not my business to enquire; he regularly paid me for what I did, and we were mutually contented. I do not know all he employed, although I might know here and there a man. I knew nothing of the business of his shop, living better than a mile from

him; I take nine, ten, or twelve pair of shoes at a time, and call to return them when finished: or they send up for them if wanted earlier.

*Q.* Was there any turn-out from 1799 to 1805? *A.* If there was, it was only for a day or two, and the employers gave the wages . . . there was none contested.

*Q.* Can you be sure there was no turn-out between those periods? *A.* No: but I know I never turned out.

*Q.* Was there any advance in the prices of the articles themselves in that time? *A.* I don't know: I believe Mr. Bedford sells his dress shoes now at the same price; I know he gives me the same wages.

*Q.* What was the cause of the last turn-out? *A.* The journeymen thought it necessary to have an advance of wages.

[24] *Q.* Had there been any advance on the price of boots before this? *A.* I don't know that there was, generally; but I believe there was on what are called backstraps and fancy-tops. I know nothing of this but as I heard in the body, for Gagen said, as those two kinds of boots fetched a good price, the employers might give an advance in the wages on them. It was replied, that Gagen worked only in those sorts, and therefore was in favour of the encrease upon them.

*Q.* Do you know whether this change in the fashion of boots was introduced by the masters or journeymen? *A.* I do not.

*Q.* Did they scab any shops the last turn-out? *A.* No: there was a division in the body, and they were forced to go to work at the old price; therefore it was impossible to scab any one: they did not gain the cause; they stood it out six or seven weeks, but they found it impossible to get their wages advanced, and they went to work again.

Q. Did you stand out as long as you could? A. Yes, and longer than I could afford.

Q. Did you advance any money to the body, to enable them to stand out? A. Yes; I told you before that I gave ten dollars out of twenty I had received of Mr. Bedford, to enable them to stand out.

Q. At what time did you make this advance? A. I can't tell, but I believe about a week before the close. I was a well-wisher to the cause, and I wished them to get what they contended for. I thought they were right. If they thought it right to ask ten dollars a pair for boots (of which work though, I am not a competent judge) I should wish them to get it.

Q. Do you work at the same price as formerly? A. Yes.

Q. Was you stopped from working at the last turn-out? A. Yes: I was stopped for six weeks, and many others were stopped likewise.

Q. But you were at liberty to make market work, or any other you could get, except of master workmen? A. Yes.

[25] ONE OF THE JURY. Do I understand you right when you say you lent money to the body, to support the cause of the turn-out? A. Yes, I said so.

Anthony Bennet, *sworn*.

Q. Do you belong to the society? A. No. I did belong to it formerly.

Q. Did you join it voluntarily, or was you compelled? A. I used to snug it. But I rather think I was compelled, it is about eight years ago and I was very young at the time.

Q. Tell the means the society take to compel persons to come under their regulations. A. They are very

arbitrary in their rules and regulations in regard to the scab law.

*Q.* What is the scab law? *A.* Why, that I shall not do as I like.

*Q.* If you are satisfied with the wages you receive, would they nevertheless compel you to come into their terms; and if you refuse, what would be the consequences? *A.* Kill me.

*Q.* You say they would kill you, how do you know it? *A.* They have threatened to do so. Not to my face, but according to what I have understood.

MR. FRANKLIN. This is no testimony, it is mere hearsay.

*Q.* Can they compel a person to leave a shop if they do not join the body? *A.* Why, yes; they will endeavour to compel you, but I don't say they do. They will punish the person by preventing his getting work from any employer in the city.

*Q.* You say you belonged to the society, how long is it since you left it, or was you turned out of it? *A.* I cannot mention the day, but it was since the last turn-out, which was in October or November last.

*Q.* What were the prices you meant to obtain at the last turn out? [26] We will show the court, that, in a written notice served upon the employers, they will prevent those who do not join them from getting any employment in the city. *A.* It is a settled principle.

James Cummings, *sworn*.

*Q.* Are you a journeyman shoemaker, and do you belong to the body? *A.* I am a journeyman shoemaker, and belonged to the body at the last turn-out, but not now. I left it because I would not comply with their request. I did not know much of their rules and regu-

lations; but when the turn-out first began, I turned out with the rest. I was turned off of work for six weeks, though I was satisfied with the wages I had received; but I was obliged to give up at the end of six weeks. George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer and George Snyder, all belonged to the society at the last turn-out. Forty members have left the society since.

*Q.* Tell by what means they force persons to comply with the rules of the society? *A.* By the scab law, which is a written law. They take means to prevent the employers from continuing men on their seats, who work under price. They give the poor, money to keep them from work. Suppose you was scabb'd, and working in Mr. Ryan's shop, all the members would leave him, if they were fifteen or twenty, unless he turned off the scab.

*Q.* Do you know of an instance where they compelled an employer to turn off his workmen? *A.* I do not know that any was compelled at the last turn-out, and the other is such a long time since, that I do not remember it.

*Q.* Do you know of any instance, in which a journeyman has been forced to pay a fine, or been compelled to join the body? *A.* If a journeyman comes to town, and does not join the body, they will not permit him to work at any shop in the city.

[27] *Q.* Recollect, if this instrument of force, was not turned against Crumbach? *A.* I recollect that he had to pay a fine, because he worked for Mr. Montgomery; they went to Montgomery, and told him to turn off Crumbach, or they would all leave his shop; the consequence was, that Crumbach had to pay a fine of twelve dollars. I cannot recollect when this was, but I believe one or two years ago, perhaps it is better than two years.

Q. How many went with this order to Montgomery? A. Five or six of the members.

Q. Have you been paid money by the society, to induce you to hold out? A. Yes, I have.

Q. Was such money given to you, to enable you to subsist your family, or to induce you to stand out?

A. It was to keep me from working, for if they had not given me the money. I should have been compelled to go to work for a living.

*Cross Examination.* Q. How much money did you receive? A. Sixteen dollars, at four dollars per week.

Q. Who bears the expenses of the society? A. I do not know: I received the money of Gerin.

Q. Did you work during the time? A. Yes, I worked when I could catch it. I made, of shoes, three pair for White, four for Wild, three for Bush; I could not live unless I got something to do.

Q. Did you vote for the turn-out? A. No.

Q. Who do you work for now? A. Mr. Bedford.

Q. Was any person scabbed the last turn-out?

A. No.

Q. *By a juror.* Was the young man (Crumbach), who came to town, and worked, obliged to quit; or was Mr. Montgomery's shop scabbed? A. He was discharged by his employer after the application of the body; the shop was not scabbed.

Q. Then a person has a right to be employed, when he comes to town, without joining the society? [28]

A. I believe they have a right to come forward, as soon as they hear of the society.

Q. When a journeyman comes to town, or an apprentice is free, do they not compel him to join the society? A. Yes, he must come to them if he means to work in the city.

*Q.* Are the written rules hung up in the society's room? *A.* They are written in a book, and when a person becomes a member, the secretary writes his name down in the book.

*Q.* When you became a member, did you make a promise to conform to the rules? *A.* I did nothing but pay my entrance money, and hear the rules read.

*Q.* Was you at liberty to depart from the society? *A.* Not if I expected to work in town.

William Forgrave, *sworn*.

*Q.* State what you know of the cause now trying. *A.* I am a journeyman shoemaker: in the year 1800 I became a member of the society, the price of admission is elevenpence, my name was set down, and the articles were read over; thy are generally read over every night. If you do not abide by them, or work under wages, they tell the employers to discharge you, or they will leave him; in this manner you are driven from shop to shop, till you are driven out of all manner of work, that is of any profit. I have known instances of this kind. A notice was sent by the secretary, by order of the society, to discharge a particular man, or they all would leave him; such were sent to William M'Culley and Joseph Baldwin. I was myself one of the committee to hunt up cases of the kind; we reported one at Baldwin's I think about four years ago, who did not come forward and join, and was therefore discharged. The case of M'Culley's was that of a man who was not a good workman, he had neglected to attend the meeting as enjoined by the articles; which is, that if a member does not attend for three nights, he is to be [29] noticed the fourth, when, if he does not appear, he is struck off, and the employer is

informed not to employ him any longer, otherwise the rest will leave his shop.

The name of a scab is very dangerous; men of this description have been hurt when out at nights. I myself have been threatened for working at wages with which I was satisfied. I was afraid of going near any of the body: I have seen them twisting and making wry faces at me, and heard two men call out scab, as I passed by. I was obliged to join, for fear of personal injury, and to stop two apprentices who worked for Mr. Logan, as well as myself; and confined to market work and cobbling for a livelihood. This last turn-out I was six weeks kept from my regular employment, through fear of the society. I went to work before the turn-out began, after I came to town, I think about the 20th of October.

SAMUEL LOGAN, sworn. I became a member of the society in 1792, and continued in it until it was dissolved some time in the same year. They laid restriction on the members, which I thought arbitrary, and opposed them. There was an affirmation introduced, as solemn as the oath I have just now taken. It was that I will support such and such wages, to the utmost of my power, &c. They had to repeat this after the secretary, I know a number, to work under the wages, they had solemnly promised to support, especially such as were in a situation similar to Harrison. I therefore requested a repeal of this affirmation, which broke up the society; so that we never met till 1798 after the fever, then about fifteen of those who had first returned or remained, called a meeting at Cross's; to begin the society again for the support of wages; as soon as we could agree upon the increase, we raised our wages,

we made the demand and we got it. In about six months, we made another raise, which we also got. In May 1796 we had another turn-out, and then also we got the wages. In 1797 I left the city and went to Baltimore. I returned third of August in 1798, the people had generally left the city, and I went to reside [30] at Frankford, and worked for Mr. Bedford, who gave me money enough to support me, till we returned to the city. I understood, that the journeymen then proposed another turn-out for more wages; I thought it wrong, for the wages were as high as the work would bear. I urged them to consider the condition of the married men, who returned much distressed to town, in consequence of the fever. Mr. Dubois had informed me of this attempt, and opposed it warmly, but it was carried against him by a small majority. Endeavours were afterwards made to alter the decision, but no distresses that were represented to them, would induce the society to relax. I was however by my wants, and the situation of my family, obliged to continue to work. I was therefore considered an unlawful member, and they laid a fine on me of fifteen or twenty dollars. I conversed with a member, on the peculiar hardship of my case, he acknowledged the hardship, but could not help it as the article run so: afterward when they got their wages, they declared Mr. Bedford's a scabbed shop; he had before that, generally employed about twenty journeymen, and now he lost all but four or five. His shop remained in this situation about two years; it might be longer, but not less. I found Mr. Bedford was under a great loss, by supporting Harrison and me; we proposed to return to the society and pay a fine of eight or ten dollars; we went accordingly and made the offer,

but it was refused. I have been some time in business for myself, and can now form a pretty good opinion of Mr. Bedford's loss; it was a considerable sum upon ten or fifteen men's work.

*Q.* Did the society compel members to join? *A.* When I belonged to them they had such a rule; when a journeyman came from New York or Baltimore, a notice was sent to him, at the house he lived at, that he must come forward and join the society; if he did not his employer was called upon to turn him off; and none of the members would board at the same house with him. This was an article when I belonged to the society, I cannot say what the articles are now, this was then an established rule. I received a notice myself, for having neglected going to the society for nine months in 1797. [31] In my case they did not proceed conformably to the articles; and therefore I got in again by paying entrance money, instead of a dollar and a half fine. In 1799 when the fever broke out, I was still considered as an unlawful member. Mr. Bedford went to Germantown, and one Sunday afternoon I walked with him to the falls of Schuylkill, I perceived some of the body there, and they abused me; one thoughtless young chap, called me a scab, there were two of them, I checked him, and Mr. Bedford kept off one, while I flogged the other, the next day he took out a state warrant for us both, and as the court was setting at Frankford, where I could not attend, I finally made it up. I have also been tantalized in the streets, as I have passed by them, on account of my being a scab.

*Q.* Was this done by any of the defendants? *A.* No, but it was by members of the society. Of the last turn-out I know but very little, having been in business for myself for some time; I believe Read, Snyder and

Barnes, were the men who called upon me, to know if I would give the wages required by the society.

*Q.* Did any of these men threaten you? *A.* Yes, Harket shook his fist in my face.

ANDREW DUNLAP, sworn. I am a journeyman, in the last turn-out, I was in Mr. Conyer's employ. . . . I had to conform to the rules of the society; they compelled me to give up Mr. Conyer's work, at the time I was well satisfied with the wages I received. I think it was William Dwyer, George Keimer, and one Craig who came to me, and I was kept from my work two weeks and five days, at the end of which I went to work again. I took no work during the time, but I had a pair of boots half done, which I took back when they told me to quit work, they gave me two dollars.

*Q.* Was you under any fears at the time? *A.* There were generally two persons at a time called upon me, but I was not much afraid, though there was a good many rough threatenings.

[32] *Q.* What were they? *A.* That if they caught me working at all for the employers till they conformed to the wages required, they would beat me. It was from some of the committee, I received these threats, but I do not know their names.

*Q.* What was the reason you brought back your work unfinished? *A.* Because I was afraid if they found it with me they would think I was at work, and punish me.

*Cross examined. Q.* Did any one every attempt to hurt you? *A.* No.

*Q.* Was you supplied with work at any time? *A.* Yes, with market work; but I could not make a living by it.

William Hawkins, sworn.

*Q.* Say what you know about this affair. *A.* I

know but very little about it; I know there was such a thing. I was in opposition to the turn-out, and stated that I had got the wages they required from my father; but they still refused to let me work for him, unless he would send in his signature that he would give the wages: they said such was the rule of the society, though I did not hear it read or carried. At length I went with my father's signature and they told me, they were going to scab me that night if I had not come forward. I would, however, never go to work again if there was another turn-out; though I think it hard to scab a man when he gets the wages the society require.

MR. BLAIR, sworn. There was a turn-out of the journeymen in October last, and Hepburn, Snyder and Barnes, with three or [33] four others called on me, but not being acquainted with them, I did not take much notice of them: they came with the list of the advance of wages from the body, as they called it, and enquired to know whether I would give the prices or not; they had a list in their hands. I looked at the list, and found half a dollar was charged additional on the shortest size bootees; What, said I, half a dollar for these? Yes, said Barnes, and I'll be damned if we do not have half a dollar more next fall; all the others behaved well. I knew they would not permit a man to work for us under the price, although he might be ever so willing; I will mention a circumstance that convinced me I was right in this opinion. At the turn out in 1798, I had six men working for me; who were willing to continue notwithstanding the turn-out (Mr. Dubois was a member at that time). These men were kept up in a garret, but sometimes after dark, they would venture out to Mrs. Finch's, next door but one, to get a drink

of beer; one Sunday evening, when I was gone to meeting with my wife and boy, they had ventured out again. When I returned, I found them hid away in the cellar, they had been beaten, and the girl was crying, and had been beaten also. I was very angry, and determined next day to buy a cow-skin, and whip the first that came near the house. Their clerk, Nelson, was the first, and I fell foul and beat him; he sued me for it, and my men sued them afterwards, we dropped the whole, and squared the yards; the men first acknowledged that they beat my men for being scabs. I don't remember their names; Hicks was one; but they were all members of the society. I afterwards had to pay fines for my men, to get them into the body again.

*Cross Examined.* Q. How long have you been a master workman? A. Since May, 1795.

Q. Do you contribute to the expence of this prosecution? A. I am ready to give money to it.

Q. That is not an answer; have you given money? A. Yes, I have, and am ready to give it again.

[34] Q. Was you ever a member of this society? A. I believe not of this; I was a member of one in 1793, and left it on account of their tyrannical doings.

Q. Do you remember when the patent boots were brought into fashion? A. When Gordon and Prentis first introduced these boots, they allowed the journeymen 3s. 6d. a pair more than usual; but Gordon and Welch falling out about the price, they scabbed Gordon's shop for that season; I thought the proceeding very arbitrary and protested against it, and went to work for that house.

Q. Have the masters a society? A. They have not; they may sometimes meet together, but they keep no accounts of their proceedings, they may meet as

people meet before an election, to consult on the affairs of the moment, but nothing regular.

A JUROR. Do you remember when you was in the society, whether there was any provision made for married or other distressed members? *A.* No; the sole object was to raise and support their wages . . . there was another society for assisting the distressed and disabled men of the trade. Both employers and journeymen belong to that charitable society.

*Q.* Do the masters now give the customary price? *A.* I give the full price. I don't know what other masters give.

JOHN BEDFORD, sworn. It will be necessary for me, in order to show you how some of the journeymen stand, to go back to the turn-out mentioned by Harrison and Logan, when my shop was scabbed. I employed at that time from twenty to twenty-four men; both parties stood it out for nine or ten weeks; I do not now recollect the year; but during the latter part of the time, the masters had frequent meetings: at one of them it was proposed, that such of the journeymen as would sit down to work, should be protected against the others, when the turn-out was over . . . it met the idea of the majority.

[35] MR. RECORDER. *Q.* Was it not more dangerous for the men while the turn-out lasted? *A.* No; there was little or no danger during that time. . . . The motion being carried, an article was drawn up to that effect and every one of the masters signed it; it was then handed to the printer; a number of copies were struck off, and distributed among the journeymen. Several of them sat down, but far less than we expected. I got two; some got three; some one, and others none. A number of the masters got tired, and one or two break-

ing off, the rest were obliged to do the same, or lose all their custom. We had obliged ourselves to support those who sat down, after the turn-out was over, and not to desert them. A committee came to me from the body, and required me to discharge those scabs, meaning Harrison and Logan. I answered them . . . it was impossible; I had given them my promise, under my hand, to protect them; if I discharged them, I should lay myself open to an action of damages, upon my promise. I told them peremptorily, that I would not do it. They went away, and at the next meeting they scabbed my shop; after the meeting was over, they came in a tumultuous manner round my house; my wife very much alarmed, said she hoped they would not set the house on fire. From having twenty-four journeymen, I was now reduced to four or five; in that situation they kept me two years and upwards: it is true I now and then got a man, but they were not good workmen; all the rest left me but Harrison and Logan; no man would work for me, who could get work elsewhere. I cannot form an opinion of my loss, but the jury may conjecture what it was, from the nature of the circumstances.

Some time afterward, my little capital being laid out in stock, and no way of vending it at home, an idea struck me of going to the southward, and endeavour there to force a sale. I went to Charleston at the risque of my life, for the vessel in which I went had like to have been lost at sea. I put my articles at an extremely low price, by which I had but little profit, in order to [36] induce people to deal with me. I got two customers at Charleston; from there I went to Norfolk, Petersburg, Richmond and Alexandria; and in all of those places I obtained customers . . . admitting I

could not make much, yet the price was such as to keep the journeymen employed. I returned with two or three small orders . . . business became a little brisk, and the journeymen turned out again; on which account, I was forced to raise the price of the work I had stipulated to perform. I did not want to make any profit on the rise, but yet I was obliged to raise my price to the same extent: by this I lost two customers. Afterwards there was another turn-out, and the consequence was, I lost two more; one of them a shoemaker at Alexandria, who had agreed to take 1500 dollars worth *per annum* of me. On the whole I think I lost in consequence of these turn-outs, the sale of 4000 dollars worth per year.

At the time the shop was scabbed, they would often come by the window and abuse me: one, two or three nights they broke my shop window, and they took care I should not mistake the quarter from which it came; they did not wish to break my windows, and let me suppose it done by any others than themselves. Once they broke the window with potatoes, which had pieces of broken shoemakers' tacks in them, at least the one had which they aimed at my person, and was near hitting me in the face. The boy run out to discover them, but he could not find them out; in this way I continued to be tantalized by the men for a long space of time.

In the present turn-out, Harket, Pullis, and others, in all all nine or ten came to my shop, as a committee from the body, to demand higher wages. Harket and one or two others were then in my employ. They asked me if I was willing to give the new rise: I told them I did not know what it was; they read the paper, and I thought the rise was exorbitant; one was three quarters

of a dollar, another of half a dollar, and so on. I had thought formerly a rise of three-pence, or six-pence, was a smart rise, but now they think little of a dollar. I told them I supposed I must give it, and asked if any one had agreed to give it . . . they mentioned Mr. Ryan gave it. I then said, if he gave it I must of course. I took it for granted that Mr. Ryan had agreed, but found [37] he had only said, if the other masters would give it, he would also give it.

A call of the masters was hereupon made, and we determined at the meeting, that their request should not be complied with. Finally we were advised to institute this proposition; when that was done the men set down to work at the usual wages. They afterward made propositions for a rise on particular articles, which we refused to agree to; and at length they confined themselves to raise fancy-tops but it was refused also. Harrison who had some work at home, at the last turn-out, did not bring it in, from fear; in fact he would not come to the shop, he said they knew he was an old offender, and if he came near me, they would persecute him again.

MR. RECORDER. Considering this business on a large scale, as it operates on the city and port of Philadelphia, is it not a very essential injury, to raise the prices of such necessary articles on the citizens; and does it not tend to diminish the exports? *A.* I consider it as a most serious injury to the city, and particularly to the commerce of Philadelphia. I lost myself the sale of 4000 dollars per annum worth of these goods, which was a loss of so much of the city's commerce. I believe if we calculate within a moderate compass, the southern states would no longer import these articles from England as they now do; but draw all their supplies

from us, from New-York and New-England, but such is the perfection, to which Philadelphia has brought her materials, and the excellency of her workmen that she need not fear a rival.

*Cross examined.* Q. You say the southern states are in part supplied from New-York; are not the same rates given there that were requested here? A. I don't know.

Q. Do you know the rate at Baltimore? A. No, but if the rates are, those which were asked [38] here . . considering how much dearer house rent, firing and marketing, is at those places, the journeymen in Philadelphia have the advantage of them even at the present rates.

Wednesday, a.m. March 26, 1806.

JOHN CONYERS, sworn. I cannot tell who the committee were who come to notify Rymer but I believe they were John Dubois, George Pullis and George Snyder, the others' names I do not know; I was at Rymer's shop when they came there, it was some time last fall, I think it was in October. They asked him if he would give the wages they demanded, and he told them he had not made up his mind yet.

Wm. M'Culley, *sworn*.

Mr. Hopkinson shewed the witness a written notice, and asked him if he had been served with it. A. I was served with a similar notice to this, and think it is in the same hand writing. . . Keimer served it. There was one served also on Mr. Baldwin, the words are the same, they are, "October 29, 1805. The society of journeymen cordwainers particularly request to know whether you will give the wages agreeable to a bill endorsed . . . George Keimer secretary" . . . George Keimer,

George Snyder and Pollen called at my shop, there is no difference between this and the notice served on me. I have two at home, the endorsement on the notifications is: Fancy top boots 5 dollars, back strap 4 dollars, long boots 3 dollars, cossacks 3 dollars, bootees 3 dollars. [39] They had called once before at my shop, as I was informed by my man.

Mr. Rodney putting a paper purporting to be the agreement of the masters, asked the witness, if that was his signature. *A.* The signature is mine, but I did not annex the word President to it.

Mr. Rodney exhibiting the paper said that the word "President" to which Mr. M'Culley had annexed his name, was in the same hand writing as the resolution: which he presumed was written by the secretary.

WITNESS. I admit it is my signature all but the word "President."

WM. MONTGOMERY, sworn. Dubois, Pullis, Pollen, and Snyder, I saw at Ryan's shop, and seven of the committee called upon me in the morning; I think Harket was one, but I am not certain; Barnes was certainly one, who the others were I do not know.

*Q.* Was their deportment threatening? *A.* No, they asked me if I would give the rise, if not I think they said they would take means to make me.

Mr. Rodney produced the resolution of the masters and asked him if that was his signature. *A.* Yes.

MR. RECORDER. What is that paper?

MR. RODNEY. . . It is a paper purporting to be, the adoption of an unanimous resolution, by the masters, refusing to comply with the request of the journeymen for a rise of wages, and signed by them in these words.

At a meeting of the employers, master cordwainers, October, 30th, 1805.

Resolved unanimously that we will not give any more wages than we have given for some time past.

Wm. M'Culley, *president*, Lewis Ryan, Presly Blackiston, John Bedford, William Blair, Thomas Rimer, [40] John Conyers, Fred Errenger, *secretary*, John Wharton, Casper Souders, William Stokes, George Falker, John M'Curdy, Robert Murphey, William Montgomery, Daniel Kossack, John Thompson, William Green, Jacob Bechtel, Robert Taylorson, William Harkins, William Niles, Charles Justis, Adam Walter, John Hallman, John Owen, Peter Sturgis, John Yeager, Robert Christy, Robert Millikin, George Kemble, Jacob Malambre, Leonard Shallcross, George Abel, St. Lawrence Adams, James Newton, Stephen Clayton, Thomas Amies, Daniel Pierson, George Rees, Samuel Logan, Nicholas Crap, L. Keating for Joseph Baldwin, James Alexander, Lemuel Franklin, Richard Miles.

*Q.* When they said they would take means to make you, did they say they would scab your shop? *A.* They did not use those words, but to the same purpose, for they said I would have no good workmen if I did not agree to give the rise. I had at that time order work from St. Thomas's, New Orleans, and Charleston, to the amount of 2000 dollars, but I could not afford to give the rise of wages, without a loss in executing those orders. I was therefore delayed some time in filling those orders by the turn-out.

*Q.* Was your shop scabbed? *A.* No, for the men had to give in; but for seven or eight weeks I had not a quarter men enough, to do my work; I had twenty men at the turn-out and had only three during a great part of the time it lasted.

*A JUROR.* . . . Were those who remained with you, shoe or bootmakers? *A.* Both, sir.

MR. RECORDER. *Q.* What was the price of boots before the notification, given as wages to the journeymen.

[41] A. Fancy tops	were \$4.25	proposed to be raised to \$5
Back straps	" 3.75	to " " 4
Long boots	" 2.75	to " " 3
Cossack	" 2.75	to " " 3
Bootees	" 2.50	to " " 3

*Q.* Are not the prices given, both at New-York and Baltimore, which were required by the journeymen here? *A.* I do not know the prices of journeymen's wages at those places.

Lewis Ryan, *sworn*.

*Q.* How much can a smart journeyman earn in a week? *A.* I have had them to earn but six and seven dollars, but some have earned eleven and a quarter, and twelve dollars, a week; a good workman may earn eleven and a quarter per week, for a good workman can make three pair of back-strap-boots a week, which at three dollars seventy-five cents per pair, is eleven dollars and a quarter. Some time last October, Barnes called and asked me if I had any boarders in the house. I told him I had none; from this circumstance I concluded they were assembling again; there was no association of master workmen at this time; therefore I called on Mr. Kemble, and consulted what was best to be done. I told him my apprehensions, that they would raise their prices on us, so high that we should not be able to do any work for exportation; but would have to confine ourselves to bespoke work only . . . this I had determined to do, and to make the price accordingly. A day or two after, Barnes and Snyder called on me, and asked if I would give the new prices? I answered, yes; but as I had determined to relinquish order-work, it should be to the best workmen, and that only for bespoke work; believ-

ing that my customers would allow me the difference, I was compelled to pay the journeymen for making their boots: but it is our custom to charge more than the rise of the journeymen's wages, as we are obliged to lie out of our money, in order that we may indemnify [42] ourselves for that advance. Some of the masters who were not agreed to do as I did, wished me to meet them, in order to consider the requisition of the journeymen; we met accordingly, and it was determined to make a stand, as the best method, to restrain their excessive demands upon the citizens; for last fall they had raised the wages on boots 3s. a pair; we promised to give them an answer in a few days; we came to a resolution, declining to give more than the wages then established; it was signed by all the masters present, a committee was appointed to procure the signatures of other employers; perhaps there may be thirty, forty, or fifty, who have signed the resolution.

*Q.* Was this an occasional meeting, or a regular one by the masters? *A.* It was occasional, there has not been a society of masters here for about seven years back.

*Q.* Did the masters never attempt to reduce the wages? *A.* I never have. . . There was a fixed price which we gave before the turn-out, and I have given it ever since.

**MR. HOPKINSON.** The counsel for the prosecution are willing to rest the testimony here, unless it should be necessary to repel any new matter brought forward by the counsel for the defendants.

**MR. FRANKLIN.** If the court pleases, and you gentlemen of the jury, it is my duty to open the case on the part of the defendants and to state the grounds on which

we mean to rely for their acquittal. In performing this duty I shall endeavour to trespass no longer on your patience than I conceive to be absolutely necessary for that purpose. In the remarks which I shall have the honour of addressing to you, when the testimony shall be closed on both sides, I propose to enter, more minutely, into the subject; and to comment at large upon the law and the facts which may appear in evidence. I then confidently hope, that with the assistance of my colleague, such grounds of defence will be established, that you will not hesitate to say that the defendants are not guilty of the offences with which they stand charged; [43] notwithstanding the sanguine expectations of the prosecutors, or the anxiety of their wishes to effect their purpose. I trust, you will then see that they have failed in the accomplishment of their object, and be satisfied that there is not the slightest ground either in law, or in fact, to convict the defendants.

Your attention has been led far away, from the proper objects of enquiry. In a prosecution for a conspiracy, in the latter end of the year 1805: your view has been directed to facts, which occurred in the year 1793 and 1792. Indeed, all the circumstances, which have been so long dwelt upon; and, which were so nicely calculated to touch your feelings, and excite your sensibility, happened long before any of the defendants, except one, had any concern in the association. All of them, which are of any moment, must have taken place before the defendants, at least many of them, had become citizens of this state, and while they were yet residents abroad, and subjects of a foreign government. These persons could not possibly have any knowledge of the facts, which, according to the ideas of the counsel for the prosecution, they are now to be convicted of a con-

spiracy; and, if convicted, to be severely punished. I will venture to assert, that the defendants, were not only not concerned in the transactions, which were detailed by the witnesses for the prosecution; but, that they were entirely unacquainted with many of them, until they were yesterday given, in testimony at this bar. And, gentlemen, shall men be punished for that of which they were totally ignorant? Shall men be called to answer at your bar for facts of which they had no knowledge? Forbid it, every principle of liberty; forbid it, every principle of justice! Yet, according to the testimony, which the prosecutors have exhibited before you, they seek this at your hands. One of the witnesses produced, on the part of the prosecution, though now a master workman, was at the very time these circumstances occurred, a member of this association; and is, nevertheless, called forward to establish facts against the defendants, in which he had more concern than they.

[44] (The court observed, that the counsel ought to confine himself to his opening, and not remark on the testimony, if he meant to go over that ground hereafter. Mr. Franklin observed, that the proceeding had been so uncommon, that he could scarcely refrain from expressing his feelings, as they arose; he would however submit himself to the directions of the court.)

We might, said he, consistently with the rules of law, have objected to the admission of great part of the testimony, which has been adduced. We are aware that much of it is totally irrelevant to the subject before you; but, we wished not to suppress a single circumstance: we were desirous, that the whole truth should be disclosed; we, therefore, permitted them to go on in their own way; and to give in evidence, every fact, which

they might think material. We leave it to you, gentlemen of the jury, to draw the line, and to determine what parts of the testimony do, or do not, bear upon the case.

The defendants, with a number of other persons, who go under the denomination of journeymen shoemakers, are members of an association, called "the federal society of journeymen cordwainers," which has been established in this city for a considerable time past. For fifteen years and more, the members of that society have been accustomed to the enjoyment of the privilege secured to them and all other citizens, by the constitution of the commonwealth of Pennsylvania, to assemble together in a peaceable manner for their common good. The objects, of their thus uniting, and meeting together, were the advancement of their mutual interests; the relief of the distressed, and indigent members; and generally, to promote the happiness of the individuals, of which their society was composed. These purposes were, certainly, innocent and legal: even in the eyes of the master workmen, they must appear to be laudable and meritorious. But, unfortunately for these poor and ignorant men! they went a step beyond this! They mistook their privilege! they thought they had a right, to determine for themselves the value of their own labour! and among other acts of their association, committed the unpardonable [45] sin of settling and ascertaining the price of their own work!!!

If this offence, against the master workmen were really an offence against the laws of their country, how were these journeymen to know it? they know, that their would-be-masters, had united against them; they had set the example of combining, and confederating together. They had their meetings, and passed their resolutions; they had joined all their forces: not for the

purpose only of establishing the prices of their own goods; but also, for the purpose of determining the rate, at which the journeymen should work. They assumed the right of limiting those whom they employed, at all times, and under all circumstances, whatever might be the misfortunes of society, the changes in the value of necessaries, or the actual increase, or decrease of trade; without consulting the interests, or wishes of the workmen, or permitting them to have a voice upon the question.

To this state of slavish subordination, the journeymen refused to submit. They conceived that every man being the sole owner, and master of his own goods and labour, had a right to affix the price of them; leaving to those who were to employ or purchase, the right to accept or reject as they might think proper. These appeared to them, and doubtless they will to you, to be principles founded on the plainest grounds of equity and justice.

It is well known, that many changes, according to the fashion, have taken place, in the form, and make of articles of dress; particularly of boots and shoes. These variations, occasion some times an increase of labour, and a proportional consumption of the workmen's time. A remuneration, suitable to the circumstances of the case, is undoubtedly the right of the workman. When the full-dress-fancy-top-back-strap-boots, were introduced into New-York, the employers there, at first, objected to making any extra allowance to the journeymen, for the difference of labour, and loss of time; but afterwards, actuated by a better spirit of liberality, they held a meeting with the workmen; and, after entering into a full explanation of the case, the employers were [46] convinced, of the justice of the workmen's demand, and resolved, to comply with it.

The conduct of the masters in Philadelphia, has been very different indeed, from that of the masters in New-York. The society of journeymen here appointed delegates, to reason the matter with the masters; but, a conference was refused; and, shortly afterwards, was sent to the journeymen, the result of a meeting held by the masters among themselves; which was, a paper signed by thirty of the employers, announcing their unanimous determination, not to pay any higher wages than they had before given. The journeymen have repeatedly, since, manifested their willingness to enter into an amicable explanation, and have had frequent meetings for that purpose. They have always been ready to shew, and on the present occasion, are prepared to prove, that independently of the right to fix the value of their own work, their demands were highly reasonable, and ought to have been acceded to by the master workmen. We shall shew that the amount of wages claimed was no more, than has been paid for several years in New-York; that the same, is now allowed in Baltimore, and Albany, and is much lower than is paid in some other places.

These circumstances, had no weight with the employers, they continued their united opposition, and the journeymen, in self defence, were compelled to resort to the measures which they adopted, and to continue them as long as the pecuniary situation of themselves and families would permit. We shall be able to shew that their proceedings, were not inconsistent with any law, or known institution of the land. These were the measures, however, for which the defendants were arrested, and committed to jail! These are the grounds, and the sole grounds, on which an oath was taken by some of the prosecutors, of a dangerous conspiracy against their

interests, and those of the community at large. I shall now call the witnesses, and afterwards, proceed to shew, that the defendants are entitled to a verdict of acquittal.

[47] James Geoghan, *sworn*.

*Q.* Do you know any thing of the turn-out about 1799? *A.* Yes; the turn-out you allude to, is that on which Harrison, Logan, and Bedford gave testimony; it was not a turn-out on the part of the journeymen, but of the masters who were about to reduce the wages the journeymen then received.

*Q.* Were the measures pursued at that time, taken in order to induce the employers to give the old prices?

*A.* Yes. We assembled then at the corner of Race and Fifth streets, and agreed that we would not set down to work, under the wages we had been accustomed to receive. In consequence, of the resolutions, there was a most obstinate turn-out on both sides; this went on a considerable time, and the employers had a number of hand bills printed; purporting, that they would give the wages they offered, to any journeymen of the body, who would set down and work for one year round. Some of the bills found the way into the society of the journeymen, but they did not answer the desired effect.

*Q.* How much did they want to reduce the prices?

*A.* I cannot tell.

*Q.* Can you tell on any particular article? *A.* I am not able to say particularly, but it was something considerable. After the turn-out had went on, for some time, the journeymen, anxious to put an end to a dispute so disagreeable, made an offer that they would go to work, for less wages than the employers gave at the commencement of the turn-out: it was near splitting the difference.

MR. RECORDER. At which season of the year did this

turn-out happen? *A.* It was in the dullest season; it was in the winter, that the employers made this declaration. A deputation from the society waited upon the employers with an offer of compromise, and they said they would consider it, and appointed a time for a committee of theirs to meet us, to give us an answer.

*Q.* Who received the proposition? [48] *A.* I think it was their then president, Mr Grant, in consequence of the employers wishing to meet us; we agreed to appoint a committee on our part to meet them, of which committee I was a member. We met accordingly, and Messrs. M'Culley, Grant, and Baldwin, were the committee on the part of the employers. They informed us that our proposition had been laid before the association of employers, and that it was rejected. When they informed us of this, I told them they must consider us standing on our own original footing, our propositions laid no longer open to them. They did not wish to agree to that, for they considered our propositions as still open. Some time after this, the employers began to waver, and various reports came to the society, that some of them were about to fall off. One morning early, before I was up, Mr. Ryan, accompanied with Mr. Case, came to the place I lodged at; he had a paper importing, that they would give the wages we asked, with one proviso: that we would take no measures against the scabs. This paper had no signatures, and I did not think we could proceed on it. They made some difficulty about the chairman not being able to call the society together; but, however, they returned about 10 o'clock, with the paper signed both by the president and secretary. We then told the gentlemen, we would take no measures against the scabs, they had taken measures against themselves. We

immediately called a meeting of the association, and laid the paper before them . . . some embarrassment arose from the nature of the paper, that we did not know well how to get rid of it. We wanted to have the opinion separately of some of the employers; we went to Ryan, he told us he did not mean any take-in by the paper, but to act fairly; and added, we ought to be able to transact our own business. It appeared to us clearly, that Ryan and Case wanted to humbug the employers. We returned with the answer, and afterwards I called with somebody on M'Culley, he told me he meant to give us the wages we had before, with the proviso, we did not do any thing with the scabs. When we returned to the society, it was agreed to work for such men as chose to employ us, and such as we chose to work for.

[49] MR. RECORDER. Did the society come to any resolution on the proviso? *A.* They took no resolution on it. A deputation was then sent consisting of one man or more for each shop, who had worked for employers, and asked if they had any men at work for them, some said they had, and some said they had not; but I believe they all had. Ryan said, he had had only one or two hands, which he meant to discharge because they were not competent to his work. Case sent the like answer. Bedford said he had men at work, but as he had given them his faith he would not discharge them. These declarations we mentioned to the society by the deputation, and it was said that Ryan and Case were damned rascals.

MR. RECORDER. Say what you know of the transaction, without using oaths or curses. What was the reason the society entertained such an unfavourable opinion of Messrs. Ryan and Case? *A.* Ryan had two men, and Case not one; and neither would take any of the

body, unless we would work on the same seat with every other without discrimination. However, we were at liberty to work for them.

Q. Was Harrison a member? A. He was a part of the time. I never recollect that the society went into any resolution about the scabs, but there were other shops in the same situation as Bedford's, there was Kemble's and Holman's. I believe we should have taken some resolution respecting them, but for the proviso.

MR. RECORDER. Did any of the members of the society work for Bedford? A. I know of none but Harrison and Logan.

MR. FRANKLIN added . . . and they were considered as scabs, the court will remember.

[50] Q. Was there any personal violence threatened to them? A. What am I to understand by personal violence?

Q. Why, to hurt or beat them. A. Never to my knowledge; there is no punishment inflicted on a scab, it is his own act which excludes him from the society. He has only to pay a fine if he becomes a member again; but unless he becomes a member, the constitution declares that no one of the society shall work with him.

Q. Any person has a right to exclude himself from the society? A. Yes; he excludes himself if he deviates from their rules. Harrison paid a fine of four dollars on becoming a member again.

MR. RECORDER. This is a society with a constitution, and the defendants are members of it; now with respect to the prosecuting counsel, it is fair for them to ask questions in order to ascertain its regulations; but if the defendants have the keeping of the constitution, and laws in the society, they should produce them, if they

want any justification from them, whether they do, or do not, their cause knows best.

MR. FRANKLIN. . . . We only wanted to know, what happened upon the resolution of compromise, if we had it in writing it would be best.

MR. RODNEY. . . . With respect to the constitution, we have not been asked to produce it, had we been, it is not in our possession, as members of the society. It is the society itself, that has the controul over its own books. But, if we are desired by the court, we will take every mean in our power to produce them.

MR. RECORDER. No, we don't desire it, we merely observed that it would be the best evidence produced.

MR. RODNEY. . . . Proceed to relate the circumstances of the last turn-out. *A.* I was noticed, to attend a meeting on Monday evening, which I did, and found it was for a turn-out. [51] After being there a while, a list was produced for new wages: the list did not meet my approbation, and I opposed it. The list, if I recollect right, did not make provision for a kind of work, called order-work for exportation, which had by custom so been distinguished. There was considerable debate, but finally it was determined to support the new list, by a small majority. There was a second meeting on the affair, which was likewise carried by a small majority, but on that night I believe a great part of the association left the room. They met a third night, and all parties seemed inclined to accommodate each other, they reconsidered the vote and agreed to the list of prices without a dissenting voice, except as to bootees of a certain description, made of waxed calf-skin and closed on the outside; which are as difficult to make as cossacks. At length we went to work at the old price.

*Q.* Do you know the wages then given at New-York and Baltimore? *A.* I cannot state them.

*Q.* Do you know the cause of this turn-out? *A.* They had not sufficient wages for their labour, particularly in the higher kind of work. Back-strap and fancy-top boots, I do not make, because I do not think I am paid for my labour on them. . . Nor I will not at the present price, while I can get other work to do; and my employer gives me other work.

*Q.* Do you know of any other attempt made by the masters to reduce the price of wages, whether they have not reduced order-work? *A.* I never do order-work; I am always paid the full wages.

*Q.* How many hours a day must a man work to earn eleven dollars and a quarter per week? *A.* I could not earn ten dollars at the present rates, if I was to work all the twenty-four hours of the day.

*Q.* How long must a man work by candle light, after the hours of the day? *A.* I cannot ascertain that.

*Cross examined. Q.* How long have you been a member of this society? [52] *A.* I cannot say exactly, but I believe it may be said that I have been a member ever since its existence, upon the footing it now stands.

*Q.* Have you been long acquainted with the journeymen's wages? *A.* Ever since I was a boy, at least ever since I worked in the capacity of a journeyman.

*Q.* Tell the wages given as far back as you recollect, and what they are now? *A.* When I was first free, they were 4s. 3d. a pair for shoes, boots were then reckoned at three pair of shoes, that is 12s. 9d. a pair, but at that time I believe we did not understand extra work in them, such as they do now: when they raised

shoes they did not raise boots to three times the price of shoes.

*Q.* What is the price of making boots at this time?

*A.* 18s. 9d. for a full trimmed pair.

Here considerable pains were taken to draw a comparison between the wages for making boots, formerly and at present. But the difference in the particulars of the work at those two periods rendered it difficult to understand, at length it was summed up in this, that twelve years ago boots were made for 12s. 9d. a pair, with stitched rands worth 1s. 6d. of the money. . . Now they are two dollars and three quarters, without stitched rands. The advance has been made partly by the masters and partly by the journeymen; and Mr. Bedford himself was once a very excellent hand at raising the wages. He could not say how much had been effected by the turn-outs of the journeymen.

*Q.* Can you say whether a journeyman when he comes here is, or is not obliged to join the society? *A.* We consider all workmen who work for wages-shops as proper members for the society.

Mr. Ingersol repeated the last question. *A.* Yes.

*Q.* And if a master continues to employ a foreigner who will not join your society, do you not, in the language of the society, scab the employer's shop where he works, if the master will not discharge him? *A.* So says the constitution, but I never knew an instance of such severity taking place.

[53] *Q.* You say the turn-out in 1799, was occasioned by the employers attempting to reduce the wages; tell the particular articles to be reduced, and say whether, when all were taken together, the amount of the list was not the same? *A.* I said it was to reduce

the wages, but I believe there were some articles they proposed to let stand as they were, such as some kind of shoes; but of this I am not certain. I believed they offered no higher wages on any article.

*Q.* Had there not been a turn-out on the part of the journeymen just before? *A.* I believe there was the year before, but I was not then in the city.

*Q.* Was it not the object of the masters to bring the wages back to the old price? *A.* If I understood right, from what I have heard, it was so.

*Q.* Is the same price given to all hands, good or bad? *A.* None are to work under the price; a good workman, may get more.

MR. RECORDER. Are you at liberty to dispense with your by laws or constitution in that article, which declares that a man's shop shall be scabbed for employing a person who has broke the rules of the society? *A.* O yes; we can do that by a simple majority, for the constitution makes that express provision.

*Q.* Is there a great difference between the workmen of those days and the present? *A.* An immense difference; if a man was a good workman at that time, allowing a good workman not to progress, he would not be able to make the commonest bootees now.

*Q.* Does your society ever relieve their members in distress? *A.* I have known it done, independent of any turn-out from charitable motives, though it is not an article of the constitution.

*Q.* Can a good workman now make a pair of boots as soon as he could formerly? [54] *A.* I cannot.

*Q.* Are you a good workman? *A.* I am a slow one, but I can work as readily now as I could at any time heretofore.

*Q.* Which do you think the most profitable work?

*A.* Making cossacks. It is what I am employed upon.

*Q.* Is that a kind of work done by inferior workmen? *A.* I believe all can do it.

*Q.* How many instances have you known of charitable relief afforded by the society to its members?

*A.* Two to my own personal knowledge.

JOHN HAYES, sworn. I am a member of the journeymen's society, and have been so two years next month. I was President at the time the fever broke out; when the fever was over, I had various representations made to me of the losses occasioned by that disaster, and the oppression of their employers. Read told me he had only two dollars and a quarter a pair for making cossacks, from the time, the fever commenced: if they had even been order-boots he ought to have received two dollars and a half; and if bespoke, two dollars and three quarters: this was given him by Mr. Rymer, others complained, and were dissatisfied with the price, paid for making fancy-top boots. I had made a pair of them myself, but found I could not afford to make them at four dollars and a quarter, which was the price. I made some work for Mr. Ryan, and he made a similar reduction upon me, because they were to go into the shop, when he used before to give the same price for shop goods, as he did for bespoke work. I heard no more for some time, till I was notified to attend the meeting, for considering the prices of the work; I was then determined to require an increase of wages, and a turn-out was the consequence. That the prices were too small, is certain, for a man cannot make a pair of back-straps, under three days [55] setting steadily, late and early. I cannot make

twelve dollars a week, and I much doubt if any man can on full-dress-fancy-top-back-strap-boots.

Q. Who was president at the meeting you allude to? A. Mr. Dubois. There was some difference in the meeting, which I endeavoured to settle by getting them to admit a rise upon some articles, and let the others remain; conceiving that, that would be better than a turn-out, as the members in general, had returned to the city, much distressed, and would be ruined, if turned altogether out of employment. I was one who waited on the employers with a list of prices, and endeavoured to persuade them to agree to it on account of the necessities of the workmen. They promised us an answer, which they sent us, and which you have here; it was an absolute refusal, whereupon the turn-out immediately commenced.

Wednesday Afternoon. John Hayes, *in continuation*.

A paper in the following words was produced and proved by him: "October 30, 1805. At a meeting of the employers, master cordwainers, resolved, that we will not give any more wages than we have given for some time past. . . Signed, Wm. M'Culley, president:" and a number of others.<sup>48</sup> Before this, I had been to my employer, who told me he would give me the same wages as before. I therefore went to work; he was not one of the associated employers, and it was permitted to work for him. We had determined that no case of distress should occur, and Harrison had lent ten dollars, and was willing to lend ten more to prevent it. Bennet had the rheumatism and was assisted with four dollars a week; one for himself, one for his wife, and half a dollar for each of his four children. Several

<sup>48</sup> See pages 104 and 105.

of the masters gave the price we asked; Mr. Young gave that price, but we worked for those generally who had not associated at the old price. [56] One observation on Mr. Hawkins's case, what past on the subject of scabbing his father's shop, who gave him the full wages, was only a joke to create laughter.

*Cross examination.* Q. Do you pay the expence of defending the prosecution? A. No; the money is advanced by the society.

Q. Do you work for Ryan? A. I did before and during the fever, but he deducted a quarter dollar a pair for the boots I made while the fever lasted.

Q. What did you earn a week of Mr. Ryan? A. I work very hard, and later hours than other men, at most I can earn but ten dollars a week: I don't remember I ever earned eleven and a quarter; in common I could not earn more than seven or eight; on an average I cannot make more than nine dollars.

Q. Did Muir earn more than you? A. I believe he did, but he had to work on Sundays to do it.

Q. Did you apply to Mr. Ryan for work, during the fever? A. Mr. Ryan gave me four pair of boots to do during that time, but he gave me a quarter dollar less than the usual price. I finished them in two weeks after I had them, and sent them into a town.

PHILIP DWYER, sworn. I became a member of the society of journeymen in September, 1804; there was a turn-out in the society in October or November following: they agreed to give us the prices we did receive, but we do not receive the same now. They, however, agreed to give us it then; they were to give us two dollars seventy-seven cents for cossack boots; but after Christmas, when the work became slack, they docked us of a quarter dollar on the order work, and put it on

the bespoke or customers work. We continued at these rates till the last turn-out [57] took place. Last summer we had no stated price for fancy-top-boots, as they had not then come in fashion. They gave us for them half a dollar more, on the idea that they were worth so much of a day's work. I have worked on them in 1805, and could only make eight dollars and a half per week, and I worked from five in the morning till twelve or one at night. I cannot make more than two pair a week. Montgomery gave a year ago two dollars and seventy-five cents, for what Blair cut me down to two dollars fifty cents. For back-straps they allowed something more, but there were no signatures given to the prices agreed upon; so that the employers made alterations as they pleased. I know that I lost twenty-seven cents a pair on boots, which either the customer or the employer put in their pockets. The making most inferior kind of boots, by the regulation of 1804, was two dollars fifty cents; shop cossacks were two dollars seventy-seven cents, they are now but two dollars fifty cents, while they sell at six and a half, and seven dollars as usual; so that they sell for the same, and the employer pays less for the work.

*Q.* What is the proportion between the amount of the wages for making, and the materials of which they are made, to the selling price? *A.* I cannot say exactly, but on a calculation the employer has as much for selling a pair of boots, as the journeyman has for making them. I cannot speak positively, were I an employer I should be a better judge.

*Q.* Did you agree to take less than two dollars seventy-seven cents for cossack boots? *A.* It was agreed that we should make order-work at reduced prices, in order to encourage the exportation trade.

For that reason they deducted seven cents from the back-straps, at least they reduce me that sum.

*Q.* Are you a smart workman? *A.* Not too fast or too slow, just middling or so, like the common run.

William Young, *affirmed.*

*Q.* Do you belong to the association of master workmen? [58] *A.* I did belong to an association of master workmen which took place about fifteen years ago.

*Q.* Inform the jury, has there been an encrease or decrease of wages during that time? *A.* There has been frequently at different periods both an encrease and decrease.

*Q.* Do you recollect the turn-out in 1799? *A.* Yes, I was a master at that time.

*Q.* Did the masters attempt to lower the wages of the journeymen? *A.* I believe they did, and it was to reduce them a good deal. . . I mean as to boots generally; but the masters did not succeed in that attempt. There was a society of masters at that time.

*Q.* Do you know whether the masters encreased the rate of wages at that time? *A.* I believe they did not.

*Q.* Have they not, from time to time, encreased the price of the articles they sell? *A.* Yes: the price of bootees was five dollars to five and a half. . . I make none now under seven. Eight or ten years ago, long plain boots with calf-skin tops, about six and a half dollars; these sell now for nine.

*Q.* Do you have the same profit now as you had then? *A.* I believe the profit to the master is about the same thing.

*Q.* Do you know anything of the circumstances of the last turn-out? *A.* I know there was such a thing; two of the journeymen waited on me together, they informed me that they felt themselves aggrieved,

and had determined to ask higher prices: a list of which they shewed me. I told them I had been in the habit of giving those prices three months before.

*Q.* Did the master workmen call on you? *A.* Yes: I told them I could not retract with propriety, as I had been a long time giving the very wages for which the journeymen turned out.

*Q.* Do you make a tolerable profit on those terms? *A.* I am satisfied with it. The gentlemen, when they called upon me, tried to make some influence upon me to discharge my workmen; I told them I could not do it with propriety. But you asked me respecting the [59] profit? the price of back-strap-boots, when I gave three dollars and three quarters a pair for making them, I had ten dollars for: the rise of leather which took place 18 months ago, particularly in skins, may have had some effect on the price: I believe eleven dollars is now generally asked and got for them; I have had twelve dollars a pair. I believe there is no standard price among the masters, I as often get twelve dollars as eleven, and this rise is about sharing the profit among the journeymen shoemakers, the curriers, and the masters at the encreased rate of journeymen's wages. But I believe the masters have the advantage of them both; as for fancy-top-boots, I believe they are seldom bespoke, unless by those who have a great deal more money than wit.

*MR. RECORDER.* You say you sell your back-strap-boots for eleven or twelve dollars; I was fortunate, I got mine for less.

*MR. HOPKINSON . . .* It was not your honour who was fortunate, but your boot-maker was unfortunate in selling them under price.

WITNESS. Be that as it may, my customers generally call again.

MR. RECORDER. How high are fancy-top-boots? *A.* I have fourteen dollars a pair for them, and have never sold them less. If any gentleman is disposed not to credit me, as I can see by the expression of some countenances, I can refer them to my customers by name . . . Mr. William Waln, Mr. John Allen, and others, have given me that price.

MR. HOPKINSON . . . Then these are the gentlemen who have more money than wit? *A.* They are gentlemen who have a right to indulge their fancy. Mr. Keating told me Mr. Ryan charged eleven dollars for his back-strap-boots; but, I will tell you a reason why I get twelve dollars for that kind of work . . . I pay my men extra wages to have them done in a superior manner. Such, gentlemen don't mind giving a dollar extra for a neat and well finished pair of boots. For the common run, I have eleven dollars. [60] The society of masters, in 1798 or 1799, entered into a kind of resolve not to employ any of the body men, in order to break them up altogether, root and branch . . . That turn-out was occasioned by the attempt of the masters to reduce the prices of the journeymen's wages.

*Q.* Did you ever get ten dollars for a pair of shoes?

*A.* I have got 25s. but I never heard of that price.

*Q.* Did you ever tell any body that you got ten dollars for a pair of shoes? *A.* I never did.

John Thompson, *sworn.*

MR. FRANKLIN. . . Here is the journal of the proceedings of the master cordwainers, who had formed themselves into a society on the 13th April, 1789, they held a meeting at which they formed their

constitution: the last entry in the book is dated 7 month, 12th, 1790.

ABSTRACT FROM THE BOOK. "At a meeting of the master cordwainers of the city of Philadelphia, held 13th April, 1789, for the purpose of taking into consideration the many inconveniences which they labour under, for want of proper regulations among them, and to provide remedies for the same, have unanimously agreed to the following Constitution:

1. That the subscribers form themselves into a society, named the society of the master cordwainers of the city of Philadelphia; to hold four stated general meetings in every year. Absentees to pay a fine of 1s. 6d.

2. Shall consult together for the general good of the trade, and determine upon the most eligible means to prevent irregularities in the same. Proceedings to be entered in a book.

3. Provides for the organization of the society, by the election of a President, Treasurer, and Secretary, and the admission of future members, &c.

4. Provides for calling the meetings.

5. No person shall be elected a member of this society, who offers for sale any boots, shoes, &c. in the public [61] market of this city, or advertises the price of his work, in any of the public papers or hand-bills, so long as he continues in these practices.

6. All fines and penalties to be paid, or for neglect, after notice, to be considered as an unworthy member, and accordingly excluded the society.

7. A committee of seven to meet together, as often as they think necessary, to transact the business of the society, and report to the next meeting.

8. All questions to be determined by a majority of the members present.

Meetings held, July 1789; October 12, 1789; January 21, 1790; April 12, 1790; 12th day of the seventh month, 1790."

MR. RECORDER. But this society terminated in 1790, as appears from the last entry.

MR. RODNEY . . . But it was a Phoenix that rose from its ashes! the society was renewed afterward.

Q. Mr. Thompson, are you a master shoemaker?

A. I am an employer; I give the wages demanded for some particular kinds of work.

Q. Have the masters expressed any resentment against you, for giving such wages? A. No, not that that I know of. I can afford to give those wages on particular kinds of boots and have a satisfactory profit to myself.

John Millis, *sworn*.

Q. Are you acquainted with the prices of journeymen's work in New-York? A. Yes.

Q. Look at that paper, are they the prices?

A. Yes.

Mr. Rodney then read the list. On reading it, there appeared no difference between those mentioned in the list, and the prices required by the journeymen at the last turn-out.

[62] Q. Is there any difference in the prices given to good and bad workmen? A. I got full wages for all my work.

John Bean, *sworn*.

Q. Do you know the prices at Baltimore? A. Yes.

Q. Are they the same as mentioned in that paper?

A. Yes.

(Reads the paper, and it appeared that the Baltimore list was the same as the New-York list).

*Q.* If these are the wages paid to journeymen, what do they sell for there? *A.* Full-dress-back-straps sell for thirteen dollars, and others in the same proportion.

Mr. Bedford was examined again as to the price of boots. He said, the highest price I ever got for fancy tops was twelve dollars, such as Mr. Young says he got fourteen dollars for. I never got more than eleven dollars for what he says he gets twelve dollars for.

MR. HOPKINSON . . . One question, I ask you, did you endeavour to prevail on Mr. Young, to discharge his workmen? *A.* Upon my oath, I did not speak a word to that import, nor did Mr. Ryan . . . All we said was this . . . There is a rise of wages demanded by the journeymen, we have brought you a paper signed by the masters generally, refusing to give it; if you choose to sign it, we shall be glad you would. He told us that he gave the wages, and that he could afford to give them because he sold his boots for twelve and fourteen dollars a pair.

Mr. Ryan was also examined again.

*Q.* Did you ask Mr. Young to discharge his men? *A.* Never. He told us that he had been giving the wages, and had charged twelve and fourteen dollars for boots: all that passed on our side was, that we would wish him to join the masters. [63] I have not made any fancy-top-boots; my price for back-straps is ten dollars and a half, unless they are some thing out of the way, either for cork soles, or an uncommonly large man; but, in such cases, I never got more than eleven dollars, and that not more than three times . . . Yet my work is as good as is to be had at any shop in the city. I pay for my stuff, and can always command the best ma-

terials. I pay my journeymen regularly, let him examine the pay they get from him. My credit is good through the city; and I believe my materials and workmen are the best in the city . . . At least I buy the best I can get, and pay my people well.

Mr. Young, *called again*.

*Q.* Did Mr. Ryan and Bedford endeavour to prevail upon you to discharge your men? *A.* I have asserted what I believed to be the fact, that they did use influence on my mind to discharge my men; that will appear from my replying to them, that I could not with propriety discharge my hands, and join their society; and I remonstrated with them on the point . . . as to what Mr. Ryan said of his credit, though it is not material to the question, I beg to be indulged in one word of observation: that his circumstances are become affluent I am glad to hear; but the difference of a few years makes great alterations. When he first came to this country, I took him out of charity, and taught him his business. In making this remark I am only acting on the defensive; I drew no comparisons when I delivered my testimony.<sup>44</sup>

Mr. Rodney. . . Conceived it unnecessary to adduce any farther testimony on the part of the defendants.

Mr. Recorder directed the counsel for the prosecution to proceed.

[64] MR. HOPKINSON: . . . The facts, which form the basis of this controversy, seem so well understood on both sides; so little contrariety appears in the testimony respecting them, that I may say, the dispute is more a question of principle than of evidence; and as

<sup>44</sup> The counsel for the prosecution, offered Mr. Ryan to rebut this testimony, as slander: but the court over-ruled it as unnecessary.

the principle appears to me to be one of the plainest known to the law, it is impossible for me to anticipate the objections to be set up on the part of the defendants. It will therefore not be expected of me, to do more than lay down that principle, furnish the authorities which support it, and apply them to the present action.

The witnesses, both on the part of the prosecution and defendants, concur in stating the material facts on which the prosecution rests, and which are prohibited by the laws of the country; and which the court are bound to punish upon conviction.

When I use the word punish, I would not be understood that it is intended to do any personal injury to the defendants; nor that they should come under any severe penalty. . . All I wish is to establish the principle by the decision of the court, and the correspondent verdict of a jury. We have no wish to injure these men, but we trust you will decide as the law decides; and after establishing the illegality of the measures pursued by the defendants, no men will be more ready than the prosecutors to shield the journeymen from any disagreeable consequences from a conviction.

The cause is an important one. . . It is said on the one side to involve an important principle of civil liberty, that men in their transactions with others, have a right to judge in their own behalf, and value their labour as they please: on the contrary, we shall shew that the claims and conduct of the defendants are contrary to just government, equal laws, and that due subordination to which every member of the community is bound to submit. . . all these are essentially connected with the present prosecution.

[65] Almost two days have been consumed in the

examination of witnesses, and much of that time has been spent by the defendants, in enquiring into points not relating to the issue. It has been attempted to be shewn, that the master workmen, associated and formed themselves into similar societies, and this they say constitutes a defence for the defendants, if the fact be so . . . two wrongs never make a right. If the masters have associated in the manner stated, they are amenable to the law in the same manner as the associated journeymen. But you cannot say, that one crime shall merge the other: yet in justice to them, I must say, that all proof of this sort has failed; there has been no proof shewn, that the masters associated for unlawful, or oppressive purposes; or that when associated, they ever attempted to controul the journeymen. There is nothing like it in the constitution and minutes, that were read from the book produced. They say they associated for the convenience of the trade; nothing is said of raising or decreasing wages; nothing relative to any provision or declaration, as to the price of workmanship, &c. If you take this book into the jury room with you, when you retire, you will not find a single transaction, at any of the several meetings, tending to the injury of any individual of the community. The period of its existence was short; it began in August 1789, and ended in July 1790; at this time the prosecutors were not master shoemakers.

Another association has been mentioned: it is said to have existed in 1799, but no attempt has been made to shew that they ever undertook to interfere with the rights of others, or to prevent masters or journeymen from taking or giving what wages they please; but even that society is at an end . . . it has long since ceased to exist. You have no proof of its being an or-

ganized society, no journal or minutes of its proceedings; but such as it was, it is now out of existence.

The third thing they offered in proof, is a paper signed by the masters, dated the 30th October, 1805. This is an answer to what the journeymen called upon them to know, namely, whether they would, or would not, give the wages mentioned in a list presented to them. They gave the answer, no doubt, as it stands in that paper, and [66] some of them met for the purpose; but you do not hear they have met, or done any thing since. An answer was required of them, and this, both in its form and matter, is a decent and respectable answer to the body of men who enquired: but you find the masters did not all meet; the answer framed by those who met, was handed about for the signature of others; no one was compelled to sign; there was no penalty or fine for a refusal. You find Mr. Young, Mr. Thompson, and others, refused to sign. . . . they were free to do so; it depended upon their own pleasure, and they exercised it. Every man was permitted to proceed in his own way. While we claim the right to exercise our own judgment, we leave others free to exercise the same. We say, we will not give these wages; but no man is bound to this association for 24 hours, if the next day 12 of them had changed their mind; there was no restriction that they should not act upon the new impulse; every man is left to pursue what his own conscience and judgment dictates. Then all this Stuff about master workmen is out of the question: if they have associated contrary to law, that is answered by saying, they are liable to a similar prosecution with the defendants.

Without recurring particularly to the evidence, I venture to state, without any apprehension of contradic-

tion, it has been proved, a certain number of persons, among whom are the present defendants, associated for several distinct and criminal purposes. This is the gist of the prosecution, it is not for what any one man of them has done, that the state prosecutes: the offence is in the combination.

Why a combination in such case is criminal, will not be difficult to explain: we live under a government composed of a constitution and laws . . . and every man is obliged to obey the constitution, and the laws made under it. When I say he is bound to obey these, I mean to state the whole extent of his obedience. Do you feel yourselves bound to obey any other laws, enacted by any other legislature, than that of your own choice? Shall these, or any other body of men, associate for the purpose of making new laws, laws not made under the constitutional authority, and compel their fellow citizens to obey them, under the penalty of their existence? This [67] prosecution contravenes no man's right, it is to prevent an infringement of right; it is in favour of the equal liberty of all men, this is the policy of our laws; but if private associations and clubs, can make constitutions and laws for us . . . if they can associate and make bye-laws paramount, or inconsistent with the state laws; What, I ask, becomes of the liberty of the people, about which so much is prated; about which the opening counsel made such a flourish!

There is evidence before you that shews, this secret association, this private club, composed of men who have been only a little time in your country, (not that they are the worse for that,) but they ought to submit to the laws of the country, and not attempt to alter them according to their own whim or caprice.

It is in proof, that they combined together; for what?

to say what each man shall have for his labour: no . . . one man may ask more for his labour than any other does. Dubois may do it, or any of the defendants may do it; they may get four dollars for making a pair of boots, if they can get any person to give it, who has more money than wit . . . (as Mr. Young says is the case with some of his customers.) It is not intended to take away the right of any man to put his own price upon his own labour; they may ask what they please, individually. But when they associate, combine and conspire, to prevent others from taking what they deem a sufficient compensation for their labour . . . and where they undertake to regulate the trade of the city, they undertake to regulate what interferes with your rights and mine. I now am to speak to the policy of permitting such associations. This is a large, encreasing, manufacturing city. Those best acquainted with our situation, believe that manufactures will, bye and by, become one of its chief means of support. A vast quantity of manufactured articles are already exported to the West Indies, and the southern states; we rival the supplies from England in many things, and great sums are annually received in returns. It is then proper to support this manufacture. Will you permit men to destroy it, who have no permanent stake in the city; men who can pack up their all in a knapsack, or carry them in their pockets to New-York or Baltimore? [68] These manufactures are not confined to boots and shoes . . . though that is very important, as you learn from Mr. Bedford, that he could export 4000 dollars worth, annually. Other articles, to a great amount, are manufactured here, and exported; such as coaches and other pleasurable carriages; windsor chairs, and partic-

ular manufactures of iron. I cannot make a calculation of the importance of manufactures to this city.

If the court and jury shall decide, that journeymen may associate together, and determine that none shall work under certain prices; then, when orders arrive for considerable quantities of any article, the association may determine to raise the wages, and reduce the contractors to diminish their profit; to sustain a loss, or to abandon the execution of the orders, as was done in Bedford's case, who told you he could have afforded to execute the orders he obtained at the southward, had wages remained the same as when he left Philadelphia. When they found he had a contract, they took advantage of his necessity. What was done by the journeymen shoemakers, may be done by those of every other trade, or manufacturer in the city. . . . A few more things of this sort, and you will break up the manufactories; the masters will be afraid to make a contract, therefore he must relinquish the export trade, and depend altogether upon the profits of the work of Philadelphia, and confine his supplies altogether to the city. The last turn-out had liked to have produced that effect: Mr. Ryan told you he had intended to confine himself to bespoke work.

It must be plain to you, that the master employers have no particular interest in the thing . . . if they pay higher wages, you must pay higher for the articles. They, in truth, are protecting the community. Nor is it merely the advance of wages that encreases the price to the consumer, the master must have some compensation for the advance of his cash, and the credit he frequently gives. They have no interest to serve in the prosecution; they have no vindictive passions to gratify . . .

they merely stand as the guardians of the community from imposition and rapacity.

A great rise was attempted, in 1805, on prices mutually agreed upon in 1804, without reason, in a mild winter, [69] when wood and every necessary of life was unusually cheap. . . I can see no pretext for the attempt, but the encreasing avarice of these men. They took the advantage of their masters, I mean their employers, in the fall of 1805, when the business was becoming brisk; when they knew the employers must have work done for their customers; they ask from seventy-five to twenty-five cents advance on making boots, according to their quality. Is this spirit of exaction to be encouraged? Will the community be satisfied to be at the mercy of these men? Your verdict must determine, whether it is to be continued or suppressed: nor can they plead the conduct of the masters as an apology. You heard but one witness say they ever reduced the prices of workmanship in the dullest season; and he speaks only of a reduction of twenty-seven cents, viz. from two dollars seventy-seven cents to two dollars fifty.

If this conspiracy was to be confined to the persons themselves, it would not be an offence against the law; but they go further. There are two counts in the indictment; you are to consider each, and to give your verdict on each. The first is for contriving, and intending, unjustly, and oppressively, to encrease and augment the wages usually allowed them. The other for endeavouring to prevent, by threats, menaces, and other unlawful means, other journeymen from working at the usual prices, and that they compelled others to join them.

If these persons claim the right to put the price on

their own work, if they say their labour is their own, and they are the judges of its value, why not admit the same right to others? If it is the right of Dubois, and the other defendants, is it not equally the right of Harrison and Cummings? We stand up for the right of the journeymen, as well as of the masters. The last turn-out was carried by a small majority . . . 60 against 50, or thereabout: shall 60 unreasonable men, perhaps single men, having no one to provide for but themselves, distress and bring to destruction, 50 married men with their families? Let the 60 put what price they please on their own work; but the others are free agents also: leave them free, or talk no more of equal rights, of independence, or of liberty.

[70] It may be answered, that when men enter into a society, they are bound to conform to its rules; they may say, the majority ought to govern the minority . . . granted . . . but they ought to leave a man free to join, or not to join the society. If I go into a country I am bound to submit to its laws, but surely I may judge, whether or not I will go there. The society has no right to force you into its body, and then say you shall obey its rules under severe penalties. By their constitution you find, and from their own lips I must take the words, that though a man wants no more wages than he gets, he must join in a turn-out. The man who seeks an asylum in this country, from the arbitrary laws of other nations, is coerced into this society, though he does not work in the article intended to be raised; he must leave his seat and join the turn-out. This was Harrison's case . . . he worked exclusively in shoes, they in boots; he was a stranger, he was a married man, with a large family; he represented his distressed condition; they entangle him, but shew no mercy. The dogs of

vigilance find, by their scent, the emigrant in his cellar or garret: they drag him forth, they tell him he must join them; he replies, I am well satisfied as I am . . . No . . . they chase him from shop to shop; they allow him no resting place, till he consents to be one of their body; he is expelled [from] society, driven from his lodgings, proscribed from working; he is left no alternative, but to perish in the streets, or seek some other asylum on a more hospitable shore. To the prayers of Harrison and Dobbins, they gave this stern answer: we hear your prayer, but we will not relax . . . you may perish, but we will not permit you to work.

They may say, they did not permit their members to perish; they furnished these men with money for their support. They furnished Harrison with five dollars in five weeks; a man who can earn eleven dollars per week, must, for being idle, receive as a compensation, one dollar a week badly paid . . . charitable and compassionate associates! . . .

I will now proceed to shew you what the law is, and you will receive from the court more information on the [71] subject. It will be seen, that the mere combination to raise wages is considered an offence at common law: the reason is founded in common sense. Suppose the bakers were to combine, and agree not to sell a loaf of bread, only for one week, under a dollar, would not this be an injury to the community? . . . Certainly it would: and few men, unless their pockets were filled with money, could support it for any considerable length of time. All combinations to regulate the price of commodities is against the law. Extend the case to butchers, and all others who deal in articles of prime necessity, and the good policy of the law is then apparent.

1 Hawkins, c. 72, §2, in note, was cited. Speaking of combinations, he says; "but since it does not appear that such an offender is indictable by any statute, it is safest to proceed at common law." "Where divers persons confederate together, in order to prejudice a third person, it is indictable as highly criminal at common law." "Journeyman confederating and refusing to work, unless at encreased prices, is indictable!" "A conspiracy to do an unlawful act, though nothing done, or to maintain one another in any matter, whether it be true or false, is indictable."

Mr. Hopkinson next cited 8 *Mod.* p. 11. Wise against the journeymen taylors at Cambridge. "A conspiracy is unlawful, even though the matter might have been lawful, if done by them individually. Conspiracy is an offence at common law; therefore, indictments need not conclude *contra formam statuti*. In this case, there was a statute fixing the price of wages."

To the same point is the case in 8 *Mod.* p. 320. *Rex vs. Edwards and others*.

4. Black p. 136, Christian's ed. describes what a conspiracy is. "Every confederacy to do acts prejudicial to others, is indictable, as to raise wages," &c.

My intention, in shewing what the objects of the society were in 1799, was to convince you that the present defendants, and the majority of the society, were aiming at the same point in the turn-out of last fall. Some of the acts, stated by Harrison and Dobbins, may not [72] have been the personal acts of the defendants; but in cases of combinations and conspiracies, each must answer for the whole: the act of one is the act of each, and to this point is 2 M'Nally, p. 611. 'The existance of a conspiracy being proved, &c. each of the parties is liable.'

All the defendants have been proved to have taken an active part in this combination, by giving notice to the masters, that unless they accept the terms proposed, they will be subjected to all the penalties of their club; such as were inflicted on the shops in 1799 . . .

He trusted the jury would see the present cause in this double point of view; the general policy, as it relates to the good of the community, and the flourishing state of our manufactures: the liberty of individuals, and the enjoyment of common and equal rights, secured by the constitution and laws. This case has exhibited such a tissue of infractions of personal rights by the club of journeymen shoemakers, that was our state legislature to dare to pass such laws as these men have passed, it would be a just cause of rebellion. I will go further, and say, it would produce rebellion if the legislature should say, that a man should not work under a certain sum . . . it would lead to beggary, and no man would submit to it. Then, shall a secret body exercise a power over our fellow-citizens, which the legislature itself is not invested with? The fact is, they do exercise a sort of authority the legislature dare not assume.

It now rests with the jury, under the direction of the court to say, whether we shall in future be governed by secret clubs, instead of the constitution and laws of the state; a verdict of not guilty, will sanction combinations of the most dangerous kind; a contrary verdict will give the victory to the known and established laws of the commonwealth.

One word more; we are told the prices asked by these men, are those given at New-York and Baltimore: if so, why do not these men go there? They know if their wages are higher there, their expences

also are higher: they do not stay here out of patriotism; they know their own interests, and can calculate them with accuracy; they [73] can better afford to work here at their old wages, than at the higher rates given in our neighbouring cities. [Closing statement omitted.]

MR. FRANKLIN. [Opening statement omitted.] The charges preferred against the defendants, are contained in three separate and distinct counts of the indictment.

First. . . For that being artificers and journeymen in the art of a cordwainer, and not content to work at the usual prices and rates, &c. See page [3.]

[74] Second. . . Is conspiring and agreeing to endeavour to prevent, by threats and other unlawful means, &c. See page [5.]

The third and last is. . . For that they designing, to form a club and combination, and to make and ordain unlawful and arbitrary bye laws, &c. See page [6.]

I shall consider each of these charges separately as it respects the object of the combination, or conspiracy, charged upon the defendants; and shall endeavour to shew, that if their design or purpose, were innocent or not unlawful, their uniting together and forming themselves into a society for effecting them, cannot be unlawful or criminal.

(Here he read the first count).

In this count, it is merely stated what were the prices insisted upon by the journeymen, and that they were more than the usual rates and prices used and accustomed to be given and allowed. This charge is, indeed, of a very general and indefinite nature. It is a rule of the common law of Pennsylvania, that every indictment shall contain a certain and precise allega-

tion. What are the usual rates and prices? Ought they not to have been stated before we were made to answer to a criminal accusation, for not adhering to them?

MR. RECORDER. . . That is a point that comes to the court.

MR. F. I leave it there. Should it not have been alleged how long these rates and prices had been accustomed to be given, whether for a century past, or from time immemorial. If it be contended on the part of the prosecution, that the rates and prices of such work, are so fixed and settled by usage and custom, that they cannot be altered: that usage and custom ought to be clearly and explicitly proven.

What is a custom? In 7 Viner 165. And Davis's *Rep.* 31, B. It is laid down that a custom in the intendment of law is such a usage as hath obtained the force of a law, and is in truth a binding law to such particular places, persons, and things, which it concerns; and which custom cannot [75] be established by grant of the king according to 49 E. III.c. 3, or by act of parliament, but it is *jus non scriptum*, and made by the people only, of such place where the custom is. In civil cases, where a custom is relied upon, it must be proven by the clearest testimony . . . much more so in a criminal case. In the present instance, none has been proven or attempted to be proved. In fact, none exists. . . Neither custom nor law, has fixed the price of this or any other kind of work.

Has the master then the sole right of determining the wages which are to be given for the labour of his journeymen? This would be too arbitrary a power for any man to contend for; it would be an insult to your understandings, to insist upon it. The real value of labour, in a country, must depend upon a variety of cir-

cumstances, which neither the master or his journeymen can in any way controul. As to the price which any particular employer may pay his workmen, that must be regulated by the contract between them. If they can mutually agree upon a price to be given, the master is bound to give, and the journeymen must abide by the sum stipulated. A different price will be given to different workmen; some deserve more than others, either on account of their greater industry and application, or their greater skill and ingenuity.

But if the employer and journeyman cannot agree upon the work to be done, or the price to be paid, neither is bound to recede from his determination.

If, then, any one man has this right, has not every other man the same privilege? If one journeyman has a right to adopt measures to prevent the effects of the obstinacy or combination of the master shoemakers, may not a number unite for the same object? A purpose innocent or lawful in one man, cannot be otherwise in a society or body of men. Supposing, therefore, that the facts charged in the first count were true; that the men refused to work but at certain prices, it is no crime, and they cannot be punished for it.

But independently of those grounds, we have fully shewn, that the demand of those men was reasonable and just. The master workmen had raised the price of these very articles; this is in proof, not only on the [76] testimony of the journeymen, but two of the masters. . .

(Here Mr. F. commented at large, on the testimony on these points and pointed out the justness of their claims.)

The second count is, indeed, a strange one. . . The defendants are not charged with an agreement to menace. They are not charged with a confederacy to

prevent . . . but, with an agreement or combination to endeavour to prevent by menace! This count is, no doubt, intended to convey a charge of agreeing to prevent by menace. How is this charge proved? the question before the court does not relate to what happened in 1799, but to what was transacted in 1805 . . . if the defendants, were not members at that time, to wit in 1799, they are not answerable for the acts of those who were; admitting the law laid down as cited from 2 M'Nally "That all the members of a society are liable for the acts of each even; though one of them be at a distance he is liable." What does the evidence prove? (Here he particularly enlarged on Harrison's testimony.)

From the evidence of Mr. Blair, it appears that he was a member of the association in 1799, though now he appears here, in the character of a prosecutor; for he acknowledges that he contributes to defray the expence of the prosecution. This man ought to be convicted, if any man ought; he ought to be punished, if the doctrine of the prosecuting counsel be correct. If all the members of a society be answerable for the conduct of some of the individuals who compose it, then ought Mr. Blair to answer for those who did so much injury to Mr. Bedford. . . And will you convict the defendants (who I have a right to suppose were not members at that time) upon the testimony of one who was a party in the very transations of which he complains? I trust you will not.

I think I may safely lay out of the case, all the inconvenience which occurred to Mr. Bedford on the principle that it was *damnum absque injuria*. It is not every act which occasions mischief to an individual, that is an [77] indictable offence. To which point read 1 Bur. p.

516, *Rex. vs. Eliz. Salmon*: which proved that every inconvenience sustained even by the public, is not an indictable offence. 3 ditto, p. 1698, *Rex vs. Storr*. 3 ditto, p. 1731. *Rex. vs. Bate and fifteen others*.<sup>45</sup> This was an indictment for a civil injury . . . held not to lie.

It is to be remembered that whatever circumstances arose from the transactions in 1799, they are not to be imputed to the journeymen, but to the masters; for Mr. Harrison is proved to be mistaken in saying, that the turn-out in that year, was for an advance of wages; it is in evidence, that it was intended to prevent the masters from lowering the wages of the journeymen, which they had attempted; you must be sensible how difficult it is for the journeymen to resist the masters, who are rich, and abound in the means to support a contest; the journeymen are poor and destitute of means, though on that occasion, it appears the masters were obliged to abandon their scheme of reduction. The journeymen obtained the same wages they had had; you may, therefore, be certain they were reasonable, or they would not be given by men who could continue the resistance.

But, considering the second charge for a moment as proved . . . that these individuals were guilty of menacing the masters, or those whom they employed. Is it an indictable offence? I say it is not; menaces are not indictable. If I threaten to burn a man's house, to assault his person, or even to murder him, it is an offence but not an indictable offence. See 2 Haw. B 1. c. 60. §6 and 7.

Now, if any journeyman who chose to work at the rates or prices offered by the employers, contrary to the wish of other journeymen, were threatened by them, or any of them, with injury to his person or property, he

<sup>45</sup> See Appendix A.

has a complete and ample remedy provided for him by law without resorting to the measures which have been adopted. He might have them bound over to their good behaviour, and if they afterwards were guilty of any threats, their recognizance would be forfeited, and they would be obliged to pay the penalty. But it does not appear that either of the defendants or members of that association, uttered any menaces or [78] were guilty of any assault. Blair said, some of his people were beaten, in 1799, but that is not brought home to either of the defendants.

If any employer suffer inconvenience or mischief, in consequence of his journeymen being seduced or driven from his employment, he has his remedy by a civil action, in which he may recover from the offender, damages equal to the injury sustained. These points are made to show, that these employers are not without their remedy. Cowp. p. 54. *Hart. vs. Aldridge*. . . an action of trespass for taking several of the plaintiffs workmen out of his service . . . shews that this would have been the proper remedy in the present case.

The third charge branches forth into three divisions.

First. . . Combining to make unlawful and arbitrary bye laws. What proof is there of the association having made any unlawful or arbitrary bye laws? . . . None . . . But supposing that such laws had been enacted by the society, are the defendants to answer for them in this way? Should it not appear clearly, that they assented to them? When the question was taken, the defendants might have been in the minority; and shall they be punished for an act of the society of which they have shewn their disapprobation? It appears in evidence, that some of the defendants opposed the adop-

tion of the resolutions which were passed on this very occasion.

(Here he reviewed the testimony on this point.)

The positions advanced by the prosecuting counsel on this subject, might be carried to a very alarming extent. If his sentiments be correct, there are many associations in this city, of high standing, which are acting illegally, and may be made the objects of a criminal prosecution. These associations are governed by rules and bye laws, which, however, correct in themselves, and proper for the regulation of the members of the body, are far from being conformable to the standard by which he seems to think the legality of such rules is to be tried.

I will mention but one instance, and refer to your recollection for numerous other examples which might be adduced. A large and respectable society in this city has, among many excellent laws for its government, one which Mr. Hopkinson might think very arbitrary and oppressive. [79] Some gentlemen whom I see on the jury, are well acquainted with the society and the rule to which I allude. It is to this effect: That such members as shall marry in any other mode than that prescribed by the rules of their discipline . . . though it might be in strict conformity to the laws of the land . . . and such as shall marry any other than members . . . shall be expelled from the society . . . nor can they be restored until they have made a full acknowledgment of the error of their conduct.

On the trial of an indictment, against the members of this society, for combining to make arbitrary and oppressive bye laws, large room would be afforded to the gentleman for the display of his eloquence in expatiat-

ing on the impropriety of laws, which impose so severe a penalty on a legal and justifiable act . . . on the impolicy of rules manifestly tending to create a restriction on the frequency of marriages, and a variety of other topics which his ingenuity would furnish. In fact, according to the doctrine which he has laid down, I know of no society which can legally exist . . . if it adopt any other rules, or bye laws than the constitution or laws of the state.

Second . . . Refusing to work for any master or person, that should employ any journeymen who infringed the said law.

Third . . . Preventing by threats, menaces, or other injuries, any other workman from working for such master.

I shall consider these two subjects together. Is there the slightest evidence, that the defendants ever compelled a single journeyman to leave his employer? How did they compel? Did they use any violence? If they had they were subject to the laws and might have been individually punished for it. But neither violence, threats, nor menaces, were used. . . No man was the object of force or compulsion. . . "The very head and front of their offending was:" their refusing to work for any master who employed such journeymen as infringed the rules of the society to which they belonged.

This I deny to be an offence. There is no crime in my refusing to work with a man who is not of the same association with myself. Supposing the ground of my [80] refusal to be ever so unreasonable or ridiculous . . . to be in reality, mere caprice or whim . . . Still it is no crime. . . The motive for my refusal may be illiberal, but it furnishes no legal foundation

for a prosecution: I cannot be indicted for it. Every man may chuse his company, or refuse to associate with any one whose company may be disagreeable to him, without being obliged to give a reason for it: and without violating the laws of the land. [Transition statement omitted.]

I will conclude this part of my argument, with the remarks of a very sensible and judicious writer, which are so apposite to the subject before you, that I think it right to submit them to your consideration. 1. Smith's *Wealth of Nations*, page 89. "Workmen desire to get as much, masters to give as little, as possible. The former are disposed to combine in order to raise, the latter in order to lower. It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters being fewer in number, can combine much more easily; and the law, besides, authorises, or at least does not prohibit their combinations, while it prohibits those of the workmen. We have no acts of parliament against combining to lower the price of work; but many against combining to raise it. In all such disputes the masters can hold out much longer. A landlord, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long run, the workman may be as necessary to his master, as his master is to him; but the necessity is not so immediate. We rarely hear, it has been said, of the combinations of masters; though frequently of those of workmen. [81] But whoever im-

gines, upon this account, that masters rarely combine, as ignorant of the world as the subject. Masters are always and every where in a sort of tacit, but constant and uniform combination, not to raise the wages of labour above their actual rate. To violate this combination is every where a most unpopular action, and a sort of reproach to a master among his neighbours and equals. We seldom, indeed, hear of this combination, because it is the usual, and one may say, the natural state of things, which nobody ever hears of. Masters too, sometimes enter into particular combinations to sink the wages of labour below this rate. These are always conducted with the utmost silence and secrecy, till the moment of execution, and when the workmen yield, as they sometimes do, without resistance, though severely felt by them, they are never heard of by other people." &c.

I shall now examine the law on which the prosecution is said to be founded, and take up and consider the authorities cited. I shall contend that in England the conduct of the defendants would be considered more in the light of a statutable offence, than a crime at common law; because, as I shall shew, in that country there are acts of parliament which limit wages, and make it criminal to exceed those limits. But that, even if it were an offence at common law, it has never been extended to this country, either in practice or principle.

The points determined in the authorities cited, are in direct contradiction to the principles of our government and therefore cannot be law in this state. I might safely grant that a conspiracy for an unlawful purpose is indictable. But I insist that no combination to accomplish an object which is innocent, or at least not illegal, can be criminal or indictable. And I trust I have

shewn that the objects of this association were of an innocent kind, or at least not illegal.

I will now examine, whether those parts of the common law, cited in support of the prosecution . . . if indeed it be common law . . . have been extended to this country. . . If they have been extended, it must have been while this state was a province of Great Britain.

[82] What is the rule with respect to the extension of the common law to colonies? It is laid down by Blackstone, 1 Tucker's Black. 108 and 109.<sup>46</sup>

(Mr. Samuel Kennedy, one of the jurymen, being sick, the court adjourned till to-morrow.)

Thursday, March 27, 1806. The court met, but Mr. Kennedy remaining still very sick, they continued the cause till to-morrow morning 10 o'clock.

Friday, March 28, 1806. MR. FRANKLIN, in continuation. — I feel for the situation of the court and jury, occasioned by the length of this trial; but particularly for the gentleman who is still indisposed: I will, therefore, be as short as possible in what I have to add. I had reached that part of my subject, which relates to the law of the case, and on which this prosecution is said to be grounded. 1 Hawk. p. 348, "to prejudice a third person . . . to impoverish him is criminal in a confederacy." This comes within the meaning of the rule. I was willing to admit, that a conspiracy to do an illegal act was criminal. To prejudice or impoverish a third person, would be immoral and wicked in an individual, therefore, in more. But there are many acts of an individual which may, in their effects, prejudice another,

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<sup>46</sup> See Appendix B.

which are not unlawful or indictable. For instance, there is a house not far distant from us, which is situated between a blacksmith's and tallow-chandler's shop; the tenants suffer great inconvenience from the smoke and smell. These shops also prejudice the owner, for he cannot obtain so high a rent for his house, as if they were removed. The workmen employed in them, therefore, occasion a very serious inconvenience to a third person; but who can think them criminal? And yet, according to the doctrine contended for, when carried to its full extent, if each of these shops belonged to a society, [83] the individuals who composed it might be indicted for a conspiracy to prejudice and impoverish a third person, and be punished by fine and imprisonment at the discretion of the court. A man has a right to refuse to work or associate with another; if he refuse, it may operate an injury to the employer, but he is not answerable for that injury.

Mr. Bedford and Mr. Ryan's cases were introduced with a view to the application of this part of the law. It is of no importance what the inconvenience was to them, if the journeymen had the right to refuse. It is possible, if those masters had the right to compel the journeymen to work at their prices, they might not have incurred any loss. Mr. Bedford, instead of losing 4000 dollars in 1799, (and I am sorry for his loss) might have made an enormous profit: but would you therefore authorise him to compel men to work for him? I apprehend these things are not to be done for the convenience of Mr. Bedford, Mr. Ryan, Mr. Blair, or any other employer; the rights of the poor are not to be sacrificed to the wishes of the rich, nor should the privileges of the citizen be sacrificed to the benefit of

Philadelphia, or the whole trade and commerce of the state.

The next expressions in the authority cited are, "nor to maintain one another in any matter, right or wrong." If this be correct, what are all your town meetings, your ward committees, and your associations to support particular candidates for office? These are combinations to maintain one another in very important matters: but, if the authority cited, be law here, they are illegal . . . you must discontinue them, or you render yourselves liable to an indictment for a conspiracy: they are all, all unlawful.

I Hawk. b. 1, c. 72, §2, note 2, is cited. This point rests on 8 *Mod.* p. 11. *Rex. vs. the journeymen taylor.* . . "It is not for the denial, &c. but for the conspiracy they were indicted; and a conspiracy of any kind is illegal, though the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it."

And is it contended that the doctrine contained in this case is law in Pennsylvania? It may be adapted to the [84] meridian of London, Paris, Madrid, or Constantinople, but can never suit the free state of Pennsylvania. What is there in it which invites your acceptance? By this authority, whatever is innocent or laudable in one, becomes criminal if he unite with others in doing it.

It is lawful for an individual to use his best endeavours to extinguish the fire which burns his neighbour's house, but he must not unite with others in doing it. What then becomes of your fire companies, your hose companies, and other institutions of a similar nature . . . none of which are incorporated by law?

It is lawful for a man to improve himself in any art or science, but he must not join with others for the purpose. What then becomes of the numerous literary associations which do so much honour to Philadelphia? What fate awaits the academy of fine arts, of which the learned counsel is so zealous and useful a member?

It is an act of virtue to assist the poor; but to unite with others for the purpose is criminal. What then are all your charitable and benevolent societies, but unlawful combinations, and punishable by this law?

It is lawful for a man to be active in the promotion and encouragement of trade, manufactures and agriculture; but a society formed for the purpose, becomes a wicked and unlawful confederacy. Your Chamber of commerce must therefore be closed, and your manufacturing and agricultural societies be dissolved.

These would be the consequences of adopting the system which the gentleman is so desirous of introducing into this state. But I maintain the position, that it is not common law even in England. There are acts of Parliament in that country, to limit the prices of work in various branches of business, and under those acts it is made criminal to combine for the purpose of raising the wages, otherwise than as the acts direct. I believe the journeymen shoemakers would be punishable in England for an attempt to raise their wages, not by the common law, but under the provisions of acts of parliament, made expressly for the purpose.

Admitting, for argument sake, however, that they would be amenable to the common law in England, independent [85] of the statute, they should shew us that this part of the common law has been extended to Pennsylvania; they must shew us this or they fail. On this head he quoted Tucker's 1 Black. p. 108 and

109. Of the applicability of the law to the circumstances of the country, the colonists even when in a state of dependence on the mother country, undertook to decide, and were allowed the privilege of determining for themselves. They had the sole right of judging, in what cases they would be governed by the common law of England, and to what cases it should extend. To judge of this applicability, time and experience were requisite; since it might happen, that a rule which would have been highly beneficial and practicable in the mother country, might from local circumstances, or from other considerations, be deemed inexpedient or impracticable in the colony.

How is it to be ascertained what parts of the common law are, or are not, applicable to the condition and circumstances of the country, and therefore to be adopted or rejected? The only modes in which this can be done are by legislative acts, judicial decisions, or constant usage or practice. Such laws as are obviously necessary to the wants of the people generally; whatever has been acted upon or practised, or been recognized by judicial decisions, create an application of so much of the common law, as may be suited to our situation.

I need not, I am sure, go into an argument to shew, that laws of the kind contended for, are neither necessary for us, applicable to our situation, nor suitable to our circumstances. You might as well introduce that part of the common law relative to cutting off a man's right hand for striking in court, &c. mentioned in 4 Black. p. 124. Also, the doctrine of deodand by which the instrument, or horse, carriage, or other property, which occasions the death of another, even by accident, is forfeited; which has been extended to the

forfeiture of a ship. I will not take up time in citing authorities, I refer generally to 1 Black. p. 300. [86] [Remarks of the Recorder on the doctrine of deodand omitted.] By an act of assembly, passed since our revolution, (1 Dallas ed. p. 722 and 3) it is declared, that so much of the common law or statutes, as declares, orders, directs, or commands, any matter or thing repugnant to, against, or inconsistent with, the constitution of this commonwealth, shall be null and void, and of no force and effect. By these expressions, it must be understood that every part of the law which is at variance with the design and spirit of our constitution, the genius and temper of the people, and with the immunities and privileges enjoyed under it, is as completely repealed and made void as if it were against the very words of it.

Our constitution says that "the citizens have a right in a peaceable manner to assemble together for the common good." If the manner, therefore, in which the defendants met for the purpose of their association was peaceable, it completely destroys the foundation of the present prosecution.

To shew what parts of the common law were abrogated by the revolution, or retained by the several states when they became sovereign and independent republics, he cited Tucker's Black. pages 405 and 406.<sup>47</sup> What he says of the constitution of Massachusetts is equally applicable to the law of Pennsylvania. The expressions in each are similar, and the spirit and intention precisely the same.

Here he read the comments of the judge on that passage of the constitution of Massachusetts which declares, "that all the laws which had been heretofore

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<sup>47</sup> See Appendix C.

adopted, used, and approved, in the province, colony, or state of Massachusetts-bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered, or repealed by the legislature; such parts only excepted, as are repugnant to the rights and liberties contained in that constitution." [87] And he particularly requested the attention of the jury to the conclusion of his remarks. "It was therefore essential to the force and obligation of any rule of the common law, that it had been before that time actually adopted, in the colony: and further, that it should not be repugnant to the rights and liberties contained in the constitution. Otherwise, although it might be found in every law treatise from Bracton, and Glanville, to Coke, Hale, Hawkins, and Blackstone; or in every reporter from the year books, to the days of lord Mansfield, it would have no more force in Massachusetts, than an edict of the emperor of China." Let us, then, be informed, by what law the defendants are punishable? It is acknowledged, that there is no express statute on the subject in this country. It therefore must be by the common law or it cannot be punished at all. Where is the evidence of this common law? Is it founded on practice or usage? None can be proved! Is it founded on any legal decision? None can be produced! From the first settlement of Pennsylvania, to the present time, no instance can be produced of an indictment for a transaction of this kind. If there were such, it would have been brought forward.

It is true that precedents innumerable may be imported from Great Britain. But very different are the genius and feelings of the two countries, on the subject of criminal law; particularly that branch of it which relates to the present enquiry. The theory and practice

of the criminal law of England, form an object of horror to every feeling and reflecting mind. On this subject, I beg leave to read a few of the remarks of the late judge Wilson; they are contained in the 14th and 15th pages of the third Vol. of his works.

"To give you a history of the practice of criminal law, would be a task, not difficult, because the materials are very copious; but it would be very disgusting both to you and to me. I draw the character of this practice from one who appears to have a head and a heart, [88] well qualified to feel and to judge upon the subject. . . I mean the author of the principles of penal law. The perusal of the first volume of the *English State Trials*, says he, is a most disgusting drudgery. 'The proceedings of our criminal courts at this era' . . . meaning that which preceded the revolution . . . 'are so disgraceful, not only to the nation, but to human nature, that, as they cannot be disbelieved, I wish them to be buried in oblivion. From oblivion, it is neither my duty nor inclination to rescue them.' No; nor to rescue from oblivion the proceedings of other ages and of other countries, equally disgraceful and disgusting. I recite only a single instance.

"Mr. Pope, in his picturesque and interesting retrospect of the barbarious reigns of the conqueror and his son, asks, alluding to the laws of the Forests,

'What wonder then if beast or subject slain,  
Were equal crimes in a despotic reign?  
Both, doomed alike, for sportive tyrants bled,  
But while the subject starved the beast was fed.'

"Many, I dare say, have considered this as a fine fanciful description of the Poet. It has, however, been exceeded by the strict severity of fact. We are, in the *Life of Mr. Turgot*, told in plain and sober prose,

that so rigorous were the forest laws of France, even so lately, that a peasant, charged with killing a wild boar, alleged, as an alleviation of the charge, that he thought it was a man.

"In these lectures, I have had frequent occasion to observe, and to regret the imperfection and the impropriety, which are seen too plainly in the civil codes and institutions of Europe: it is the remark . . . it is the just remark of William Blackstone, that, 'in every country of Europe, the criminal law is more rude and imperfect, than the civil.' Instead of being, as it ought to be, an emanation from the law of nature and morality, it has too often been avowedly and systematically the reverse. It has been a combination of the strong against the weak, of the rich against the poor, of pride and interest against justice and humanity. Unfortunate, indeed, it is, that this has been the case; for we may truly say, that on [89] the excellence of the criminal law, the liberty and the happiness of the people chiefly depend."

In Great Britain there are statutes made particularly on the subject of confederacies: I will read some of them. 1. Hawk. b. 1, c. 80, §10, p. 481, and Shaw's *Just.* p. 226,<sup>48</sup> shew what severe provisions are made against combinations among the workmen and others. The prices of every kind of work and labour are fixed by law; and very high penalties are imposed upon those who transgress them. See Burn's *Justice*, p. 164 and 165.<sup>49</sup> You will readily perceive the spirit of partiality, which breathes through their statutes . . . and the strong inclinations which they evince to favor the rich at the expence of the poor . . . the master at the expence of the servant.

<sup>48</sup> See Appendix D.

<sup>49</sup> Ditto (See Appendix) E.

If you are desirous of introducing a similar spirit of inequality into our government and laws . . . if you think that the labourer and the journeyman enjoy too great a portion of liberty, and ought to be restricted in their rights . . . such disposition and opinions will lead you to convict the defendants. If, on the other hand, you are satisfied with the wise and liberal principles of our government . . . if you are contented with the blessings enjoyed under our free constitution, which secures to the citizens an equality of rights, and recognizes no distinction of classes . . . I shall look for the result of these feelings and these sentiments in a verdict of acquittal.

MR. RODNEY. It is not my wish to take up more of your time on this occasion, than the nature and importance of the question will absolutely require. I regret the delay which has taken place, but this is not imputed to the counsel or to the court; it was a consequence of the unfortunate indisposition of one of the gentlemen of the jury. I lament it the more, because I fear that I shall not render the cause so much justice, as at an [90] earlier period my poor talents might have enabled me to have done. I shall, however, endeavour, to give all the satisfaction within the narrow compass of my feeble powers. Ideas, though strongly impressed at the time on the mind, frequently vanish; and to recur to the expedient of lengthy notes, too often fetters the tongue, and enchains the imagination. I am almost ready to assent to the proposition, that there is no case so bad but it can be rendered plausible, by the force of talents and the exertions of ingenuity such as we have seen exhibited on the present occasion. In the picture which the learned counsel, who opened on

the part of the prosecution, has drawn of this case, I should not have recognized one feature of the original, if I had not been present when he was so freely using the pencil.

He has attempted to excite your feelings and sympathy, in behalf of those, who can scarce refrain from smiling in your face; he has set forth their merits, their disinterestedness, and their magnanimity, in stepping between you and the impositions of their workmen, to save you from the grasp of their avarice; he has shewn you the losses and misfortunes they sustained in the contest. Is this a true picture of the case before you? Look at the facts, you will there discern the real question now at issue, between the state and the defendants. Stripped of the vest in which he has cloathed this case, and the tinsel of which he has been so profuse, independent of the blaze of passion and of prejudice, which he has kindled, to dazzle your eyes, the object is easily and distinctly seen; the penetration and good sense of this jury must rend the veil, and they will undoubtedly perceive the true and only question in this cause. It is nothing more or less than this, whether the wealthy master shoemakers of this populous and flourishing city, shall charge you and me what price they please for our boots and shoes, and at the same time have the privilege of fixing the wages of the poor journeymen they happen to employ. They may colour it as they please. I care not what complection they give it, or in what specious garb they may array it, the simple and naked question is that which I have stated.

You are called to decide for the first time, in this free country, and to fix the precedent, in favour of the doctrine contained in this indictment. The prosecutors, [91] not content with building costly mansions, rap-

idly amassing fortunes, aspire to lay up their plums annually, and they will do it, if you once give them the privilege of fixing the prices of those who are to work for them; to discover all this does not require day light; a candle, wax taper, or a lantern will be sufficient for the purpose.

I have listened with attention to all the arguments that have been urged; I claim your indulgence while I reply to them. It has been acknowledged, and the gentleman deserves credit for the candor of his admission, that the present is a novel case; that there was never in fact, an instance of a similar prosecution in this commonwealth. If the author of the book of wisdom had lived to this day, he would have qualified his expression, "that there was nothing new under the sun." The gentleman made this acknowledgment in the preface of his argument, and then undertook to state the ground, and principles upon which the prosecution was founded. I have read as a maxim of law, that what has not been done ought not now be permitted.

When you look at the mass of testimony adduced on this occasion, you will find as long ago as 1789, the masters had a society for the management of their concerns . . . that the journeymen instituted a society in 1794, for the benefit of the individuals who composed it; in 1798 you hear of a turn-out; in 1799 you hear the same; and notwithstanding all this, you hear of no prosecutions by way of indictment. Were the prosecuting officers of the state, asleep all this time? Have they and the grand juries been slumbering at their posts, and suffered a flagitious, a notorious offence to be repeated with impunity, and to continue its operation without notice or check? . . . No . . . Your officers have fulfilled their duty, they have exercised due

diligence. The learned gentleman who is to follow me in this argument, I mean Mr. Ingersol, has within that period been attorney general for the commonwealth. Grand juries bound by their oaths and affirmations, have also diligently enquired, and true presentments made of all crimes that have come within their knowledge. . . If this had been an offence against the law of the land, it could [92] not have escaped notice till this time; but if there transactions had been secret . . . was there not another body of men, who combined together to raise their wages; who would not move a rope or start tack or sheet till their terms were complied with? I am instructed to say, that the pilots of this port, did a few years ago, refuse to conduct a vessel to or from the ocean, agreeable to the rates of pilotage, before usually received. This circumstance must have been a matter universally known through the city at the time; the interest of the port, the value of the property afloat, was all placed in jeopardy. . . The magnitude of the case induces me to believe, and I have been so informed, that the most eminent counsel of the city were consulted as to the mode to be adopted to correct the procedure. Here was not Mr. Bedford's profit on 4000 dollars at risk, but hundreds of thousands, nay millions of dollars in property, and danger to the lives of hundreds and thousands of our very valuable citizens. If that combination had been a criminal offence, it would undoubtedly have been prosecuted. Their conduct was productive of serious inconvenience, I admit; but they had the right to say, at what price they would perform the service; and it was apparent, that if you did not give the wages, you could not compel them to pilot your vessels. I will just remark, at this stage of the business, a striking

difference in the two cases. . . The journeymen shoemakers acted merely in self defence, for the masters had entered into an association in 1789, several years before the journeymen associated. If we had not adduced testimony of the existence of the society of the master shoemakers in 1789, we should have found them on the record of a respected and learned gentleman (the father of the ingenious counsel on the part of the prosecution) Mr. Francis Hopkinson, in his account of the federal procession on the 4th of July, in that year.

Let the jury take out the book of the masters' society, and they will find ample powers vested in them to regulate and fix the prices of the different articles of their trade; and to form a league to reduce the wages of their journeymen. The 5th article of their constitution, declares, that after thirty members have subscribed, none shall be [93] admitted who offers any boots or shoes for sale in the public market, or who advertises the price of their articles in the public newspapers. Where is the harm of advertising the price of boots and shoes? It is a masonic secret, they will not submit it to vulgar inspection. . . Another article of the society of the 13th of April 1789, declares that the society shall consult together for the general "good of the trade, &c." . . What language can be more comprehensive or expressive than this? Within its capacious grasp there is no object! no subject of their professional interest which may not be fairly included! If it is for the general good of the trade, to raise the price of boots half a dollar a pair, and to reduce, at the same time, the journeymen's wages for making them, the other half dollar a pair, about which you find they have no squeamishness, this clause would authorize them to do it. . . It is for the good of the trade and not for the good of the public that they associated.

They say, we do not produce our constitution. I told them, they had given us no notice to produce it; it is not my method to dispute about straws, or the stay-tape and buckram of a case. If they had given us notice, we would have used every means in our power to have procured it. We would have got the books even during the trial if we could: had they desired it. . . The court will recollect that I offered to do so. There were, however, witnesses examined on their part, who are members of the society of journeymen cordwainers, and they could have produced the books as well as we could, for we are only fellow members of the same society.

We are told that this prosecution is brought forward from public motives, and not from personal views; when you see a formidable band of masters attending on the trial of this cause, and some of the most eminent counsel in the city employed to prosecute it; and when you see, further, that it is not taken up by any of their customers, it will require strong arguments to convince you, it is done out of pure patriotic motives: if they could succeed, in persuading the journeymen to believe, that this prosecution is an act of kindness done them, for which they ought to be grateful, I should think with Falstaff, "they had put some powder in our drink to make us love them."

[94] My word for it, this indictment has not originated from motives of friendship for us, nor is it thus zealously supported with a view to our interest or that of their customers. The very endeavour to impose such a belief upon you, must prove vain and fatal to their cause. Their attempt to mask their object, which they would blush to reveal; and to cover their selfish views, with the mantle of pure friendship for us; and sincere attachment to our interests; and of genuine patriotism,

cannot succeed! This idle parade of merit on their part, and these hollow, empty pretensions to credit, for the disinterestedness of their conduct, will meet that fate, which they so justly deserve. This masked battery, which they have opened on us, will be turned by the jury on themselves.

To stiffen the heel of their case, as you would a child's shoe, they tell a pitiable tale of Mr. Bedford, who lost a profitable job by the perverseness of the journeymen, who abandoned his shop because he would not pay sixteen or twenty dollars to the society to readmit Harrison and the other man. I appeal to the testimony, whether a few dollars would not have removed the scab from his blighted shop, and yet we are gravely informed, that rather than pay a paltry sum, he declined a lucrative contract to the amount of four thousand dollars! If he did, who is to blame for this? Is it our fault, or his own? The journeymen ask a certain price for their labour, Mr. Bedford does the same for his work. . . Nobody disputes his right to do so; but he refuses to give the journeymen the wages they demand. This also he has an undoubted right to do. Well, they decline working for him, and he cannot get his boots made in time to catch the bargain. This is the sum and substance of the lamentable story, which we have heard so affectingly told. The situation of Mr. Bedford at that period to be sure was truly deplorable. Indeed he was in a worse dilemma, if possible, than the poor woman, who, according to the children's tale, could not get home at night "because stick would not bang dog, dog would not bite pig, and her pig would not run over the bridge which she was to cross." I perceive you smile gentlemen, and I can scarcely avoid it myself, with my utmost en-

deavours to be serious. The fable of Mr. Bedford and his losses may be a very [95] good one for some purposes; but it is so entirely deficient in affecting incident or tragic catastrophe, that it would be out of my power, (tho' my learned friends are equal to the task) to awaken your sympathies or excite your compassion in his favour . . . for the mild and humane purpose of maintaining this cruel prosecution. Let me state to you, what I apprehend to be a similar case. . . I am wearing shoes, when there comes a severe frost succeeded by a deep fall of snow. I go to Mr. Bedford's shop to purchase a pair of boots to protect me from the weather. He asks me more than he had charged before the winter set in, and more than I am willing to give; he tells me that I cannot get them cheaper at any place in town. I find it to be the fact; and refuse to purchase any pair at all. I am silly enough afterwards, to run about the streets until my feet are frost-bitten or I lose some of my toes. Would you not laugh at me if I undertook to prosecute Mr. Bedford and his associates, because, when they would not take the price I offered for their boots, I chose to go barefooted, and was nipped by Jack Frost? Yes, gentlemen, you would treat me with derision; when I should attempt to appeal to raise passions, by shewing you the stump of my foot. And yet I may say, in consequence of refusing to give Mr. Bedford his price for his boots, I have lost flesh and blood, whilst he in consequence of refusing to give a journeyman his price for his labour, has merely lost a bargain, judge whose loss is the hardest. The cases are precisely similar as to principle. Mr. Bedford and myself sustain a loss from our own folly; but it is *damnum absque injuria*.

Suppose I were to ask Mr. Bedford what was his

situation when he first landed on our free shores ; and how much he has made, since he came into this country. Whether he bro't with him the capital he now possesses. And whether he then belonged to the class of master cordwainers, or to the more humble, but honest circle of journeymen? I believe, if we were to make out a complete account current, or post the profit and loss fairly up in the ledger, we should find a balance in round numbers in his favour, so large, that the net proceeds of the 4,000 dollar job would not sensibly affect the calculation. In fact, we should discover that he has amassed an ample fortune [96] since he sought an asylum in this new country (where the poorest individual can claim the full price of his labour) from the oppressions of the old world, where statutable provisions fix and regulate the price of every thing almost here honesty and industry are sure to meet a due reward, and days of labour and fatigue are crowned with years of ease and competence.

It is to the great privileges which we enjoy, to the total exemption from oppressive regulations, that Mr Bedford is indebted for his success in business. When I hear men who have inherited large fortunes from their ancestors, or to use a familiar expression, have been born with silver spoons in their mouths, advocating distinctions in society, and espousing measures calculated to affect and oppress the labouring classes of the community, I feel a degree of charity for the errors they commit, because they have been taught from infancy to exercise an overbearing, insulting superiority over those who really are their equals. They fancy that there is some inherent quality in themselves, which entitles them to rank and precedence above the common herd. I cannot feel the same charity for another de

scription of men, of which, thank God, we have very few in this country. For strange as it may appear, it is nevertheless true, that we sometimes meet with an individual, who, having but the other day, as it were, fled from a country where his labour was fixed at so low a price that he could not support himself and his family, only on bread and water; and having acquired in this land of liberty, by toil and industry a handsome fortune, is loud and boisterous for reducing those who move here, in his former humble sphere, to the same state of vassalage and want, which he had to his sorrow experienced in the despotic regions from which he had been compelled by "strong necessity's supreme command," to fly. Abandoning at the same time his native soil, his relatives and his friends. To my mind, such conduct is incapable of any satisfactory solution. I have often seriously reflected on the subject, without being able to explain the enigma.

Let me again call your attention to the volume of testimony, we have unfolded, and which affords so much for present and for future reflection. You cannot be [97] surprized, after what you have heard delivered on oath, that the master cordwainers should so rapidly grow wealthy and become opulent. It is only matter of astonishment, that under such circumstances, they should have the hardihood to institute the present prosecution. If it be true, as they have contended, that the best, and fastest workers among the journeymen, by toiling at the last, late and early, can earn twelve dollars a week, I think it has been satisfactorily proved, that the masters receive a clear nett profit deducting the expence of materials, equal to the amount of wages which they pay their journeymen. From this, it must evidently appear, that those who employ twenty-four

journeymen, must make near fifteen thousand dollars a year, when the best journeyman receives about six hundred, a sum scarcely adequate to the frugal maintenance of himself and his family in this city, tho' living on the simplest and cheapest fare which the market affords. Why then, in the name of common sense, are they charged with avarice and extortion? The labourer is surely worthy of sufficient hire to enable him to live comfortably. I believe there is not a single profession in this city, in which the profits are so great. Master carpenters, men of skill and science, who have obtained a fair reputation, to many of whom, men are running to get work done, and when obliged, as they frequently are, to let some of their friends have a part of their jobs, make no such sums; they are satisfied, if I am correctly informed, with a fifth of what is paid to the journeymen for building a house.

We are told, in answer to our shewing the precedency which the masters took, in forming their associations, that if they have offended, they also are punishable . . . true: but they ought to be aware of it, they will be sorry that they burnt their fingers in raking up the embers that smothered a fire which may consume themselves. They will find that the law, like the Gospel, is no respecter of persons; for I trust it will never be said, with truth, in this country, in the language of the poet,

“Through tatter’d rags great vices do appear,  
Robed and fur’d gowns hide all. Plate sin with gold,  
And the strong lance of justice hurtless breaks:  
Arm it in rags, a pigmy straw doth pierce it.”

[98] In England where they have weighed, gauged, and marked every thing, they have established permanently, the wages which journeymen in various

trades shall receive, they punish the master who gives more wages than is fixed by law, as well as the journeyman who asks or receives them. I do not know what strange infatuation could have led to this prosecution. I think the masters ought to have been more cautious of rousing a sleeping lion, or a slumbering tiger, lest they also should fall victims to their rapacious jaws. Lord Kenyon might have put them on their guard, for he has declared in a recent instance, that the masters should recollect they were equally liable to punishment, for giving more wages with those who demanded them, and would be punished accordingly.

Some words were dropped, respecting publications in newspapers, relative to the cause now before you; it is my wish, that every thing of this kind should be avoided. I think it useless, and improper, I pronounce it here, and I would proclaim it on the house top; every cause ought to be conducted without prejudice or pre-possession, though I do not think, that so much influence is attached to publications of that sort. The ebb and flow of human characters and personal credit, and of modest merit, is not regulated by the light of the moon. We should be indeed in a wretched situation, if the current of justice could be changed, or its surface ruffled by every little puff from a newspaper. My wish is, that the jury should lay every thing of that kind out of their recollection, and decide upon the facts and the law, as they shall be disclosed in the course of the trial.

It is not necessary, that I should call your attention to that general principle of the criminal law; that all men are presumed innocent until they are indubitably proved to be guilty. The grand jury has found a bill; but that is for the mere purpose of putting the defend-

ants on their trial; it is then *functus officio*, and, remember! they hear but one side of the question. Before the present jury, the counsel must not only prove the facts, as laid in the indictment, but must shew that they are criminal by the breach of some known constitutional law. Until they have done this, they cannot call upon you for a verdict of guilty.

[99] The more severe or penal any offence may be, the more cautious ought the jury to be of convicting. If it will subject the defendants to a loss of character, and deprive them of their reputation, to such an extent, as to disqualify them from becoming witnesses on ordinary occasions; if the conspiracy with which they are charged, is a species of the *crimen falsi*, that would subject them to the injury and infamy I have mentioned: but you will be relieved from any painful measure of the kind, for we shall make their innocence so clear to the jury (without whose unanimous consent they cannot be convicted), that you will say without hesitation, they are not guilty, in the manner and form in which they stand indicted. The law has given us a two-fold armour . . . a coat of mail in the form of a grand jury; but in the petit jury we have the Egis of Jove, to shield us from injury; this jury is judge both of law and fact. For the purpose of ascertaining what is the law, let us examine what are the facts. In 1789, a society of master shoemakers was formed. In 1794, a society of journeymen was instituted, and continued till the time this prosecution was commenced, in 1805, and down to the present day. It is said, the masters' society was abolished; but if so, another rose from its ashes; and it appears so late as last fall; they had a meeting for the purpose of saying what they would or would not give. But it is objected, that this was but a

temporary meeting; be it so: it is not necessary they should have a regular society, to bring them within the meaning of this law of conspiracy. They say, they have no constitution, no bye laws; even if there were no paper, ink, or parchment to produce, facts would speak louder than words or writings. Yet we have found them, signing and sealing an instrument, as their combined and joint act; and this alone is sufficient to charge them with a conspiracy. Now, to shew you what a conspiracy, according to the ancient law, was; I shall cite 4 Black. p. 136 and 137. "A conspiracy to indict an innocent man falsely and maliciously who is, accordingly indicted and acquitted, is a farther abuse and perversion of public justice." Here the prosecutors appear to be the conspirators, and if you acquit the defendants they will be proved such; "for which the party injured, may either have a civil action, &c. or they may be indicted [100] at the suit of the king, and were, by the ancient common law, to receive the villanous judgment." And well it might be called villanous! we are happy to find it has not been inflicted for a long time past.

But to proceed with the facts: in 1799, the masters attempted to lower the rate of wages, and a turn-out was the consequence; they attempted to take the scale and compasses into their hands, and graduate the prices the journeymen were to receive, for the fabrication of the several articles of their manufactory. This was the period at which Mr. Bedford met with the great loss on the 4000 dollar job. But the great offence is, that they will not work at a shop where those work who violate their rules: they say, they will not frequent a house where certain characters are entertained. But have they not a right to say for themselves, they will

not work, or board, or keep company, with this or that particular person? and because this conduct happens to interfere with the interest of some third person, does it render them criminal? If anybody is materially affected, by conduct of this nature, it must be those who keep boarding houses; and we have heard no complaint from that quarter. I fancy, some of them find it to their interest, to accommodate the body men, whilst others receive equal profit from entertaining those who do not belong to the association. Every man has a right to chuse where he will live, and any number may form a determination not to board in the same house with particular individuals, without incurring the slightest degree of criminality. You might with equal propriety assert, that he was guilty of an offence, who would not sleep in the same bed with another man. By the same rule, like the tyrant Procrustes, you might lop or stretch men to the exact size of your mattress or bedsteads. When those who are members of the journeymen's society, agree not to work in the same shop, or board in the same house, with those who will not join an association, originating from self-defence, the first law of nature: is this rationally to be considered as duress or compulsion? If it be either, it does not, as it relates to duress, fall within the legal definition of duress, or imprisonment, or duress *per minos*, and I know of no other species. In reference to compulsion, it is like that [101] in Shakspear, where one of the *dramatis personæ* asked another for his reasons which it was pretended was compulsion, and the reply was; "give you a reason on compulsion!" The fact really is, it is a mere negative agreement on the part of the journeymen as perfectly lawful, as for two or more persons to agree, not to purchase dry goods, or groceries at a particular store.

No person is compelled to join the society, and it would be as novel a definition of the term, compulsion, as it would be preposterous in an individual, to contend that he was compelled to join a society, because, otherwise the members would not associate with him. If this be styled compulsion, what is that to be called which the poor journeymen have experienced, arrested and bound over by recognizance, at the instance of the master cordwainers? No doubt, many of them would have been sent to jail, had not some humane friend interposed, and become their security. When confined, they would have been deprived of the opportunity of working for themselves, at any price. Of every species of oppression, tyranny or compulsion, that is the worst which the forms and instruments of the law are made to subserve, because you are then attacked in a point where you are most vulnerable, and have the least means of defence. You are compelled to submit until the proper season of just retribution arrives; and I am much mistaken, if the books do not all speak one language on this subject. It is said, ours is not a charitable society, notwithstanding they prove, by their own witnesses, that we have done charitable acts towards them and their families: this establishes the fact more effectually, than if it had been written in the constitution, in large characters. By their deeds you are to know companies as well as men.

They are said to be a self-created society. There was once a considerable noise made in this country about self-created societies; it had its day, and is now hushed for ever in the silent tomb. This society had as much right to create itself, as the associations to promote commerce, agriculture, the arts, or any other object.

They assert, as soon as an emigrant journeyman arrives in this city, he is asked to join the society. What

then? He has the right to accept or decline the offer; [102] the thing is perfectly optional. If he declines, we only say, we will not work or board with you. This is no force: if he comes, it is his voluntary act. When you become a member of any institution, you engage to obey its rules. This complaint ought to be made of sterner stuff, it is too flimsey to shelter the prosecution. Those who are declared against by the present body, may form a new one, and enter into similar regulations; the masters may join them, and when a journeyman asks for work, they may enquire to which society he belongs? If to the old, they may answer, we will not employ you; if to the new, we will give you work; you shall be supported. There would be nothing criminal in this conduct, they neither offend the law or the commandments. So the body-men have a right to say, we will work only where we please, and at what price we please; and we know that no earthly power can in this free country compel us. But give a verdict against the defendants, and farewell to the dearest privilege which they enjoy! The masters may then dictate where they shall work, with whom, and at what prices.

Much has been said of the importance of manufactures to this city, and the injury manufacturing interest would sustain, if journeymen were permitted to regulate the price of their own labour. The gentleman has shewn you one side of the picture; I wish to call your attention to the other. The great advantage possessed by Philadelphia over New-York and Baltimore, in the extent of her monied capital. Those cities give more wages, and we have proved them to be given at this very time: and we wish to receive merely the same prices, and no more.

The gentleman calls out, why do they not go there?

Suppose they should at his bidding take wing and fly away, how would Mr. Bedford and Mr. Ryan make their boots, and what is to become of their export trade? Do you wish to banish them? The verdict called for by the prosecutors, will effectually answer the purpose. They may not be able to go off in a balloon, or a stage-coach, but they can walk with their little all on their back, and those who cannot may hobble on a crutch, to avoid the infliction of pain and penalties, and of fines, and imprisonment! . . . New-York and Baltimore wisely hold out [103] good prices to attract them; and good policy ought to dictate to the employers here, to allow them as liberal a compensation. Leather is said to be cheaper here, and I do not believe, living costs more than at either New-York or Baltimore. If they can live as well, and can get more wages in those places, they will go; you may tie them for awhile by binding them over to answer indictments, but the instant the prosecutions end, they will leave you, unless you will give them equal encouragement. New-York and Baltimore will gladly receive them, as they take care to profit by every other advantage which our inattention or narrow policy throws into their way. You are not ignorant of the rapid strides they have made to engross your commerce; drive away your artists, and mechanics, and your manufactures will in like manner dwindle.

Philadelphia is a great commercial and manufacturing city; that the legislature of the state by its fostering care, in opening new roads and cutting canals, may render it still more prosperous . . . must be the sincere wish of us all. Believe me, this city may be considered, as yet in its infancy. It has not arrived to that vigorous state of manhood, which with due care and attention it will attain. Do not then, I beg of

you, bring on a premature old age, by establishing the principle, that labourers or journeymen, in every trade, are to submit to the prices which their employers, in the plenitude of their power, choose to give them. I say in every trade, for what is declared to be the law with respect to journeymen cordwainers, must be equally the law with journeymen printers, carpenters, hatters, and every other mechanical calling or profession. I stand up this day, the advocate for them all; though the retained counsel of the present defendants alone. The moment you destroy the free agency of this meritorious part of the community (for remember the principle is undeniable, that labour constitutes the real wealth of a country) the verdict which you will pronounce, will proclaim the decline and the fall of Philadelphia. The learned counsel has endeavoured to persuade you, that by adopting his principles we shall rival the manufactures of London in boots and shoes. I trust the time will come, when we shall rival her in these and every other branch of manufactures. The best [104] method to accomplish this desirable object is to secure to workmen the inestimable privilege of fixing the price of their own labour. Let them ask as freely as they breathe the air, wages for their services. No person is compelled to give them more than their work is worth, the market will sufficiently and correctly regulate these matters. If you adhere to our doctrines you will do incalculable benefit to this city, I venture to predict, without the spirit of prophecy, that scarcely a breeze will blow, but what will waft to our shores experienced workmen from those realms, where labour is regulated by statutable provisions; not a wave of the Atlantic, which will not bear on its bosom to this country, European artificers, by whom the raw material

furnished from our extensive regions, will be wrought in the greatest perfection. Give me leave however, frankly to declare, that I would not barter away our dear bought rights and American liberty, for all the warehouses of London and Liverpool, and the manufactures of Birmingham and Manchester: no; not if were to be added to them, the gold of Mexico, the silver of Peru, and the diamonds of Brazil.

Having thus reviewed the facts, and considered the subject, on the reason and policy of the measure, in answer to the observations of my learned friend opposed to me, let us next advert to the law which he has adduced to support this prosecution. If I understood the gentleman, he stated, and he was obliged to do so, that he did not dispute the right of any individual to fix the price of his own labour. This is sound orthodox doctrine, but he undertakes to say, that notwithstanding it is lawful for one, that whenever two or three attempt it, it is not lawful for them. If this be a sound principle it will hold good in all cases. I cannot have mistaken the learned counsel, in the position he laid down. He admitted in the most unqualified manner, that any of the journeymen might lawfully ask, whatever wages he thought proper for himself, but he asserted that where two or more agreed to ask the same prices, they are guilty of a violation of the law, by uniting in a lawful act! It is the combination, he says, renders that criminal which would otherwise be perfectly innocent. This doctrine sounds very strangely to my ears. Let us consider it first, on principle, and afterwards [105] on the authorities which he has used in support of it.

I apprehend, there can be no suitable distinction drawn between one lawful act and another. Some, to

be sure, may be more laudable than the rest, but all not prohibited or forbidden by law are equally lawful. To make myself perfectly understood, I presume it is admitted that a single journeyman shoemaker, may as lawfully ask any price for his work, as he may do the most meritorious act; this being understood let us proceed to investigate the principle which renders the joint act of two, criminal, though the same act would be lawful for either of them separately to perform.

One method of reasoning, is by analogy. In natural philosophy, this mode is frequently relied upon. We will, therefore, adopt it. A single merchant may lawfully embark in trade to any amount: the avocations of commerce are so various and extensive, that it is very common, for several persons to enter into partnership, with the view of promoting their respective interests. There are, at this very moment, in this city, firms composed of three, four, or half a dozen individuals, who jointly set their prices on every article they sell. Agreeably to the gentleman's doctrine, they are guilty of a conspiracy. It would be perfectly lawful, no doubt, for any member of the concern, to engage in the same business; but it is a crime in such a number, tho' innocent in one!

Mr. Hopkinson and myself, were once members of a law society, intended to prepare us, like the manoeuvres of a parade day, to discipline the military, for the real action of the war. It was a very lawful object in any individual to fit himself for the active sciences of his profession, but for such a number to associate, was absolutely incompatible with his present principles. We could expel any member who violated our rules, this would have excluded him from the society. Was this criminal in us? If not, why is it charged as a crime against the defendants?

The Cliosophic and whig societies of Princeton college (the school in which many of the first characters of our country have received their education) are founded on the same laudable principles. Would the members of either of those bodies be considered amenable in a [106]court of criminal justice, for uniting in an act of expulsion or refusing to associate with the member when expelled?

There are many persons delighted with the entertainment, which the theatre affords. Any gentleman may lawfully frequent that place of amusement, but for a number to join and take a box, would be highly criminal.

Dancing is a very fashionable and a very pleasing recreation; though according to the principle of my learned friends, a country dance would be criminal, a cotillion unlawful, even a minuet a conspiracy; and nothing but a horn pipe or a solo would be stepped with impunity!

To be more serious: the alarm of fire is given. No man will say it is not lawful to extinguish it. I step out of my door: I am called on to assist in moving an engine: I answer, if one can drag the heavy machine along, it is very well, for if I assist it will be a conspiracy; and this beautiful city must be destroyed by the conflagration, or those who put out the blaze must be consumed in the flames of the common law! Let the fire companies and the hose companies of this town, take warning by the issue of the present prosecution. I do not know that any of them are incorporated. Many of them surely are not. By the same rule they might prevent people, from going to church or meeting, a practice so truly commendable. An individual who was not able to take a whole pew would be deterred lest he would be guilty of a conspiracy, from joining with a

friend, whose resources would be adequate to the object. May I suppose, when this new code, now promulgated for the first time in America, goes into actual effective operation, we shall be afraid to join in the last solemn act of humanity, burying the corpse of a deceased friend. This afflicting duty must be confided to the hands of the lonely undertaker, as not even the nearest connections can unite in following their departed kinsman to the tomb!

Gentlemen, I have not been considering this subject through the cold inanimate medium of books, but have been comparing the present with such striking analogous cases, that I really feel fearful, if this prosecution succeeds, the learned counsel opposed to me, will, with my colleague and myself, be indicted at the next term [107] for a conspiracy. For, tho' either of them might lawfully prosecute, or either of us lawfully defend, we come clearly within their doctrine of conspiracy, when two are concerned on each side of the present question.

If this be denied, I will put a stronger case. Let us suppose, for the sake of argument, that we were all concerned for the same client in an important suit, and we unanimously agreed not to argue his cause, unless he paid us one or two hundred dollars each, (not an uncommon case.) This is a combination precisely similar to that of the journeymen cordwainers. We jointly determine on the price of our services: our client is the employer, and we are the men to do his business. He refuses to accede to our terms, and thereby loses his cause. Are we liable to be indicted and punished for a conspiracy?

I might proceed in this way, and put numerous other apposite cases to expose the fallacy of the principles,

for which the learned counsel has so strenuously contended; but the task would be useless, and the time misspent, after the observations of my colleague, who has anticipated me in much that I had to offer on this point.

We have heard it asserted, that in this country we have no rules of self government, but the laws prescribed by the legislature, and the constitution ordained by the people. I have ever understood, that when any person thinks proper to become a member of a particular society, he is bound by its regulations. It is well settled, that an action may be maintained for any sum incurred under the bye-laws of a corporation. Marsh companies and others frequently exercise extensive authority, and proceed in a summary way to enforce obedience to their rules; a man is not compelled to enter a society, but if he once voluntarily becomes a member, it cannot be disputed, but that he is bound by its rules, whether it be incorporated or not.

This prosecution, I understand, is to be supported on the principles of the common law. Such it appears to be from the face of the indictment, and the learned counsel have explicitly avowed it.

With respect to the civil part of that celebrated system, there is much to applaud. Though I am an admirer [108] of its prominent features, I am by no means an idolater. It cannot be disputed, but that it presents such an abundant harvest, that even the gleaners reap a pretty plentiful crop. That it is capable of improvement and amelioration, will not be denied.

[General remarks omitted.]

Of the criminal code, I have uniformly entertained a very different opinion. It is so sanguinary, that it resembles the law of Draco. From high treason to petit

larceny, the punishment is death. I speak not now of the mode of trial (though in capital cases a man is not allowed counsel) or of proof, but of the scale of crimes and punishments. I am not ignorant, that a great number of offences have been created by statutes, to which the same severe penalty has been annexed. But in a variety of instances, punishments inflicted at common law, have been mitigated by statute. It would be irrelevant, were I to fatigue you with the disgusting catalogue. In Pennsylvania, this sanguinary system has been changed. Our penal code has been revised and ameliorated. An enlightened policy has dictated the salutary plan which we have adopted. In the rude gothic castle of the common law, there is no apartment dedicated to the reformation of an offender. How different from the fair fabric Pennsylvania has raised, in which numerous places are provided to reform the manners and the morals of an unfortunate criminal, and to restore him, a new man, to society. He must be guilty of a crime, at which human nature revolts, when he is deprived of the opportunity of correcting his bad habits. All hopes of teaching him how to live, [109] are then abandoned; and he is consigned reluctantly to the solitary cell to prepare to die.

[Digression omitted.]

I shall contend, however, that by the common law, independent of statutes, the acts which we have done would not subject us to prosecution and punishment; and I deny, that even if they would, we have adopted in Pennsylvania, this particular part of that sanguinary code. I have read you the old definition of the crime of conspiracy, let me now read you the old punishment. As my Lord Coke says, "The judgment is grievous and terrible, viz. That they shall lose their freedom and

franchise of the law, to the intent that they shall not be put, or had upon any jury or assize, or in any other testimony of truth: and if they have any thing to do in the King's courts, they shall come *per solem id est*, (that is) by broad day, and make their attorney, and forthwith return by broad day: and their houses, lands, and goods, shall be seized into the King's hands, and their houses and lands stripped and wasted, their trees rooted up and erased, and their bodies to prison: all things retrograde and against order and nature, in destroying all things that have pleased or nourished them. . . "And it is to be observed" (says Lord [110] Coke) "That this villanous Judgment is given by the Common Law." 3. c. *Inst.* p. 143.

The facts charged against us, are not embraced by the ancient definition of conspiracy, which I will not repeat; nor are we apprehensive of having the dreadful sentence passed on us, which you have just heard from Coke's *Institutes*.

It is necessary for me to inform you, that since those remote times, the definition, or description rather, of this crime, has been so enlarged as to include a great variety of offences; but never was it, I believe, extended so far as to render criminal, those who united in a lawful act for their common benefit, by any good authority with which I am acquainted. There seems, gentlemen, to be a fashion in the law, as well as in other things, and the prevailing rage is in favor of prosecutions for conspiracy. They are very happily calculated to produce convictions, as any one may discover by consulting their history. The proceeding is easily moulded into every convenient shape, and the rules of evidence are extremely accommodating to the prosecutors.

If you were to mention the name of conspiracy to an

old statesman, he would immediately be referred back by his recollection, to the days of Brutus and Cassius. If you were to speak of such a thing to a modern politician, his imagination would instantly present the picture of a combination to subvert the constitution, and an insurrection or rebellion to overturn the government. No such facts, I assure you, are charged against us, and it is impossible they should be against the "Federal society of journeymen cordwainers." Were you to talk on this subject to a barrister, well versed in the black lettered lore, but unacquainted with modern decisions, he would lay his hand upon Lord Coke, and give you the old definition and the old punishment. Of this crime, also, it is not pretended that we are guilty. No, it is one of the more modern species of conspiracy, which they allege we have committed.

Let me remark, that, notwithstanding the villanous judgment, as I have before observed, has not been imposed for a great length of time; the consequence of being convicted of a conspiracy at the present day, is to [III] render a man infamous, and prevent his being qualified as a witness. (To prove this, Mr. Rodney read 4 Black. *Com.* by Christian, p. 137, in not. Leach, *Crown Cases*, p. 382,<sup>50</sup> and referred to Case in Cowp. p. 258. This, if not a villanous, is an infamous judgment.)

It is my duty to satisfy you, that there is no law subjecting us to this last punishment, for any part of our conduct. When our forefathers landed in this country, then a wilderness, they brought over with them, according to the most respectable authorities, only so much of the common law, as was suited to their situation and circumstances: neither the civil or criminal part of that code was adopted *en masse*, at any subsequent period.

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<sup>50</sup> See Appendix F.

That portion of the criminal code, which was reduced to practice, the founder of Pennsylvania very early endeavoured to ameliorate. The struggle between the freemen of this commonwealth and the British councils, may be traced on the records. It is needless to add, that superior power, disappointed all their benevolent views.

By an act, passed soon after we had unfurled the banners of independence, the common law and statute law, which had before been in force in the province, are declared to be binding and obligatory. I call, then, on the learned counsel to shew, prior to the passage of that act, a similar prosecution. I believe it new, not only in the instance, but novel in principle. If they will be so good as to produce a single case, where an indictment has been maintained against any class of labourers or mechanics, either journeymen tailors, cobblers, or tinkers, for uniting in a resolution fixing the prices of their labour, I will give up the defence. I know well, if such a case stains our records, they can and will produce it. Even admitting then for the present, that our conduct would be punishable by the common law, they must satisfy you, that this part of it is in force in Pennsylvania. This will be a task which no legal thesis can accomplish. The only method of shewing it in force, is to prove that it has been acted on, and I bid defiance to all the researches they can make. If the criminal dockets, from the earliest period, were to pass in review before them, [112] I may safely say, they could not discover one solitary precedent of the kind.

This act of assembly presents us with an ample shield against the present prosecution, *hic murus aeneus esto*. The legislature who passed it, intended to prevent such attacks on the rights of individuals, and such encroach-

ments on the privileges of society, through the instrumentality of the common law.

I will remark, that the note of Mr. Leach, which they have cited to warrant the position, that all combinations are illegal, though the subject matter of them be lawful, refers to the case in 8 *Mod.* for support, and so do the other passages which have been relied on. Before I proceed to examine the only authority on which this monstrous principle rests, let me first inform you what is the credit and reputation of the book, in which the case is to be found. I believe its character is such, as will not entitle it to any evidence with the court and jury. In 1 Bur. p. 386, a reporter of acknowledged merit, and correctness, when this book was cited, viz. 8 *Mod.* p. 331, *Arthur vs. commissioners of sewers in Yorkshire*, there is a marginal note made in the following terms; "A miserable bad book, intitled *Modern Cases in Law and Equity*." Again, when the same book was referred to in 3 Bur. p. 1326, there is another note in which it is stated, "the court treated that book with the contempt it deserves, and they all agreed the case was wrong stated there."

(The counsel for the prosecution observed, that the title of the book referred to, in *Burrows*, was not the same as that they had quoted.)

MR. RODNEY. . . If I can be furnished with the old edition in folio, I will engage the title is the same, but if my learned friends will examine the pages referred to, in the new edition, now in court, they will find the very cases that were cited in argument, in Bur. and disapproved by the court, viz. *Arthur vs. the commissioners of sewers of Yorkshire*, &c.

[113] Friday Afternoon, *eodem die*. Mr. Franklin referred to 1 Black. p. 300, to show, that by the law of

deodand, a vessel and her cargo were forfeited to the king, if any thing by accident falling from aloft, should kill any person on board. The recorder also intimated to the counsel, that in 1 Hawk, p. 122, § 2 and 3, the same principle was to be found which was stated in 8 *Mod.*

MR. RODNEY. . . I am relieved from the task of making any observations, or adverting to any circumstances, to identify the book referred to in Burr. Reports, and to prove it to be the same which the counsel for the prosecution have cited. They candidly admit the fact. Let me then appeal to the judgment and the justice of this court, whether this miserable book, (for I will not profane the term, by calling it an authority) will warrant them in deciding, agreeable to the doctrine contended for, and executing the monstrous principle it is said to contain. Is an indictment pregnant with such fatal consequences to the dearest rights and interests of freemen, to be supported on the ground of a volume entitled to no credit or respect, and which has been so justly doomed to merited disgrace and contempt? The decisions of the court, to which I have adverted, must be recognized as authority; and they stamp a character on 8 *Mod.* which destroys its competency for any purpose.

I might here rest the case with safety, confident that the court and jury would pay no regard to such a book. An indictment, built on this sandy foundation, cannot be supported.

Again. When considering any decision, you should uniformly advert to all the facts and circumstances stated in the case. Every expression of the court is to be taken *secundam subjectam materiam*. No opinion delivered when giving judgment, is binding as authority, unless it be necessary in the decision of the questions

involved in the cause. With these principles to direct us, let me ask your attention to the case itself. The King *vs.* the journeymen taylors of Cambridge, 8 *Mod.* p. 11.

(Here Mr. Rodney read the whole case, and proceeded to comment on it.)

[114] This, it appears, was an indictment for a conspiracy by the defendants to raise their wages as journeymen taylors. By the statute of the 7th Geo. I. c. 13, their wages were established and fixed at a certain price. Notwithstanding they were regulated so long ago, they cannot ask, at the present day, without a violation of a positive law, a cent more than they are allowed by that statute, which is a poor pitiful compensation, scarcely sufficient to procure food and raiment enough to keep soul and body together. Such, however, is the slavery of their laws, and slaves must submit to them. It was just as unlawful for one, to attempt to get more wages, as for a large number. The object for which they conspired, was in that country clearly illegal. How, then, does this case sustain the principle of my learned friend, that though the object be lawful, the combination is nevertheless punishable. In Pennsylvania, we have no act of assembly, fixing the wages of journeymen shoemakers, or of any other journeymen; and God forbid we ever should! These tyrannous, oppressive statutes, have never been extended to this state. It was, therefore, perfectly lawful for us, either individually or jointly, to ask that compensation which we thought reasonable for our labor. Remember, gentlemen, my position was, that in order to constitute a conspiracy, the object for which they associate must be unlawful. So far, this case warrants the principle I have laid down.

The learned counsel has eagerly seized some loose expressions of the court, as reported in this contemptible book, in which they are made to say, "a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it, as appears in the case of the tub-women *vs.* the brewers of London."

If these words were to be understood in reference to the case then before the court, and to be taken according to the subject matter under their consideration, their generality would be qualified and restrained by the particular facts and circumstances, upon which they were called on, to give an opinion. When they proceeded beyond the fair boundary of the case, all they said is to be considered, to use a technical phrase, as *obiter dictum*; [115] and if said by the best judges, as reported in the most accurate book, is not to be considered as authority.

Even as it is stated in 8 *Mod.* the court inform us that such a doctrine was held in a particular case to which they refer. They do not pretend to determine such a principle themselves, but refer to a previous decision on the subject. I should have been very glad, to have seen this celebrated case of the tub-women: I believe it is not to be found. If such a case exists, let it be produced, and I will endeavour to answer it. If the gentlemen are not able to produce it, no answer is necessary; for *et non existente, et non apparente eadem est lex*.

There is another part of the opinion of the court, on which the learned counsel seem to place great confidence. It is said by the court, "The indictment need not conclude *contra formam statuti*, because it is a conspiracy which is an offence at common law." Hence

the learned counsel argue, that we have been guilty of a crime, punishable by the common law. The passage referred to admits of an easy and satisfactory explanation. It is unnecessary that I should remind you of the statute, fixing precisely to the exact measurement of feet, inches, and barley corns, the wages of journeymen taylors and labourers. Whenever a statute directs a particular measure, or establishes any regulations, without prohibiting in express terms, the violation of them, and prescribing a punishment, any party contravening such regulations, is by the common law subject to indictment; and the indictment is, technically speaking, styled an indictment at common law. I will readily admit, that where persons combine to accomplish an unlawful object, that is the true distinction, whether that object be unlawful at common law, or rendered so by statute, according to the modern system of conspiracy, they would be subject to an indictment, as it is said in this case to be, at common law.

To illustrate and support the principle I have submitted, I will turn to Doug. *Rep.* p. 424, *King vs. Smith* and others. The summary of the case, as contained in the marginal note of the reporter, is . . . "it is an offence at common law to obstruct the execution of power granted by statute, and an indictment for such an offence, need not and ought not to conclude *contra formam statuti*."

[116] (Mr. Rodney then read and commented on the case.)

To this plain authority I will add another decision, contained in 4 *Term Reports*, p. 202, *King vs. James Harris*. (Reads the case.) Here you find that a power was given by statute to the king in council, to establish quarantine regulations, and to make such orders as they

thought proper, respecting persons going on board ships coming from infected places; without annexing any particular punishment to the disobedience of them. The defendant having contravened some of the regulations established, was indicted, and the indictment contained one count at common law. He was convicted. When brought up for judgment, as for a misdemeanor at common law, his counsel objected that he was not subject to punishment in that way. But by Buller justice, "On the first clause of this act of parliament, coupled with the order in council, there is no doubt but that the defendant may be punished on a common law indictment." Gross justice. . . "The act of parliament having given power to the king in council, to make the order in question, and not having annexed any specific punishment to the disobedience of it, it is undoubtedly a common law offence, and must be punished accordingly."

I say with judge Buller, that coupling the regulation of the wages, made by statute, with the combination to increase them, the offence charged against the journey-men taylors in 8 *Mod.* is indictable at common law. But without the statute it would not be indictable at all. In the sense, then, which I have explained, was the language used, and in no other by the court in 8 *Mod.* and therefore it does not prove, that by the common law, journeymen and labourers could not ask, either singly or in a body, what price they thought proper for their services. Why have statutes been made to fix their wages, if they had it not in their power before to ask at pleasure? Statutes which will some day prove ruinous to the manufacturers of England. One bad law always requires another equally oppressive, to carry into effect its slavish regulations. We all know, that the British

statutes are so severe, against any person who may persuade an artificer to come to this country, that an American merchant, when in Manchester, must be afraid to smile, or say "how do you do," to one of their journeymen.

[117] His honour, the recorder, has called my attention to a passage contained in the text of Hawkins. It is in these words. "All confederacies wrongfully to prejudice a third person are highly criminal at common law." I presume, when the writer uses the term wrongfully he means that the act should be, legally speaking wrong, or in other language, it must be unlawful, and then it would fall within my distinction. Such are the instances which he mentions. One impression may be explained by those which accompany it. *Noscitur a sociis*. But after all, I question very much, whether the books referred to by Serjeant Hawkins, in the margin, would warrant his assertion to the extent. If they would, the learned counsel ought to have produced them, and it would then be in order and in time for me to answer them.

In Pennsylvania, I repeat, there is no legislative scale established, by which the wages of journeymen of any description are graduated and adjusted. We have no legal barometer in which to weigh their services, and without such an act of assembly, unless those British statutes, of which I have spoken, have been extended to this country, which is not contended, we are not liable to an indictment as at common law. We have pursued an object, not contravening any positive provision, nor contrary to the established principles of the common law, and we must be innocent.

The determination of any number, not to lodge in the same boarding house with particular individuals, sure-

ly cannot be considered as a confederation wrongfully to injure them, let it proceed from whim, caprice, or any other motive. The old proverb says, a man is known by the company he keeps; and you must permit every body to choose their associates. Should you establish the contrary principle by your verdict, I beg you to contemplate the consequences. The masters, I suppose, will then select at pleasure the houses in which we must board. They may order us to lodge in the hospital or the bettering house, if they will receive us. If you give them the right to choose where we shall live, they will have equal authority to say how. They may fix our diet, and declare, whether we shall dine on turtle soup and roast beef, or on barley broth and the legs of frogs. [118] They may direct us to live on vegetable or on animal food, on fish or on flesh, or to eat off the same plate or dish, drink out of the same tumbler or mug, and to use the same spoon or ladle. If they can determine the quality, they can regulate the quantity with equal propriety, and I expect we shall have our food weighed out to us like a soldier's rations, by ounces, pennyweights and grains.

I acknowledge, the journeymen are not as opulent as the master cordwainers, but it is neither a sin nor a crime to be poor. They are represented, however, as mere birds of passage, who can at any moment flock and depart in a body. So can the masters if it suits their interest. They can follow them the next day, if they find it to their advantage. It is true, they own houses and possess a large capital. Of the former they can conveniently dispose, and though their capital may now lay deposited in bars of silver or wedges of gold, in the cells of the different banks of this city, secured by iron doors and bolts, nothing can more readily escape, or is of

more easy transportation. With wings of paper, more faithful than those of the son of Dedalus, it can fly across a sea, wider than the Icarian, or alight on some eligible spot in the United States, where it will be the most productive. Recollect how much of the capital of this city has already flown to other places, where it is actively and profitably employed, and you will believe me without hesitation.

Temptations are held out, to procure a conviction; to allure you, into a verdict of guilty. You are told that you will get your cossacks and slippers made cheaper by convicting the defendants! Are you credulous enough to believe this promise will be performed? If you are, you can be persuaded that a stale six-penny brown loaf is a shoulder of mutton. But I have no such opinion of you, or I should not waste my breath in discussing this case. Excuse me for saying, however bloated in promise, they will be very lank in performance. Rest assured, they will not fox a boot, or heel-tap a shoe, one farthing cheaper for a conviction. I will go further and say, they will not be able to do it. If you banish from this place, (as it is morally certain you will,) a great number of the best workmen, by a verdict of guilty, can you reasonably [119] expect, that labour will be cheaper? Will it not rise in value, in exact proportion to the scarcity of hands, and the demand for boots and shoes, like every other article in the market? My learned friend has said, he was advocating the interests of the journeymen, I assert, that when rationally understood, I am pleading the cause of the masters. Remember I now tell you, that if you convict the defendants, for asking the same wages which are received in New-York and Baltimore; not a month will elapse, before the present prosecutors will gladly offer them

the same terms, and they will entreat those they have driven away, to return and work for them. If you will take my advice, you will leave the regulation of these things to the open market. There every article, like water, acquires its natural level: adopt this rule, and you will be more likely to get your boots much cheaper.

I do not know, if you sanction their doctrines, that supposing the journeymen should set up a shop themselves; and offer to make boots and shoes, for less than the usual price the masters have charged, (a thing not improbable,) they would be permitted to sell, or even to buy; at that rate the masters have just as much right, and no more, to fix the price of those articles, as of the journeymen's labour. For when the indictment speaks of the wages usually accustomed, I would, with my worthy colleague, thank the gentleman to inform us, when and how long, this custom has been established, that the usage has grown into a law. It is in evidence that wages have varied in different years; the prices have been constantly fluctuating, like every thing else in the market, and it is impossible to shew any legal usage on the subject.

The prosecutors promise, in case you find us guilty, we shall not be punished. I protest against this cruel mode of procuring a conviction. Do they possess the power to pardon us? If they did, are you willing to trust that they will exercise it, when they are the very authors of this prosecution? Are they the executive directory of the state, or has the governor of the commonwealth granted them a blank pardon with his signature and the great seal annexed? I am sure he has not committed himself in this manner. The truth is, if the defendants are convicted, they must be punished [120] according to law. The prosecutors cannot controul the

sentence which the court will pronounce, nor can they restore our competency as witnesses in a common case, if the effect of a judgment for a conspiracy, will be to render us infamous.

(The court desired the counsel to answer the passage in Leach's Hawkins.)

MR. RODNEY. . . I had flattered myself that the explanation I gave, when I adverted to that authority, a few minutes ago, would have been deemed satisfactory. If the cases which are there cited, had been produced, I would have cheerfully entered into a particular examination of them. The books referred to are not on the table, and the general propositions of Hawkins do not, I apprehend, affect our cause; the court now allude more particularly, perhaps, to the expression, that a confederacy "to maintain one another in any matter whether true or false," is a conspiracy. Maintenance itself is a crime at common law; and by statute. A combination, therefore, to maintain, must be unlawful; and even if the cases cited, should be found, on accurate investigation, to support the principle, they would not in the least degree interfere with my argument: I have been endeavouring to prove, and I thought with success, that the common law of England, laying aside the statutes, would not subject us to indictment, for any part of our conduct; and if it would, that such principles have never been extended to this country. But if we must pass through this dreary wilderness, like the children of Israel, of old, I trust we shall reach the promised land in security: If we must cross this red sea, I do firmly believe, there is a constitutional power in the jury, which will command the waves to recede as we approach, and the waters to divide, that we may gain in safety the shore, where we shall be welcomed by a verdict of acquittal.

When you hear it admitted that this indictment, is without precedent or example in the annals of the state, ought they not to produce some new act of the legislature regulating the wages of labourers, and fixing the maximum and minimum in the fluxion of time and circumstances. This is out of their power, and they now press you to usurp legislative authority and to enact the [121] law yourselves. I do not recollect any case in which the legislature have interposed, except in that of the innkeepers and bakers. In these they have been unsuccessful, though there was some plausibility in the attempt to impose restrictions on those to whom the state granted the privilege of a license. Such laws cannot be executed. It is in vain to fix the price of every glass of wine, toddy or grog, that a tavern keeper may sell.

I must confess, if prices are to be regulated, the legislative body should perform the task, and let us see what political doctors will undertake it. I hope, if they fix the wages of journeymen, they will settle the rent of every house in town, and every farm in the country; that they will establish permanently, the price of coffee, tea, sugars and salt; set a value on all dry goods, particularly boots and shoes which will bear a reduction, and then enter the market to reduce beef, eggs, and butter, &c. to a proper standard! . . .

[Digression omitted.]

In this last contest between the journeymen and the masters, the weaker power against the stronger, (for whilst the masters may lose the profits on a good job, the journeymen may want bread) we have been unsuccessful, after a struggle to obtain the same wages with our fellow labourers in New-York and Baltimore: we have been compelled to yield and submit to the former reduced prices for our work. The masters have been completely triumphant, and victorious as they are, they

persist in this cruel prosecution! They have already accomplished all they asked, what can they desire more? Is it their wish to alarm, terrify, and persecute us; until they reduce us to the servile state of vassals? You have all heard, gentlemen, of the fable of the hen and golden egg. I fear it will be verified in the conduct of the masters. They grasp at too much! They are not satisfied, with the rapid rate at which they are at present amassing wealth. They wish to make their fortunes by [122] a single turn of the wheel. They may destroy the source from whence the golden streams flow. They may, and I believe, will banish every good workman from this city, if they continue this system of persecution with success. You, gentlemen, may stop their career. For your own interests, for theirs, and for the sake of the community, I beg and entreat you to arrest the arm of vengeance. They know not what they do. If you do not protect us by your verdict, the court must and will punish us. Their judgment may render us infamous. Those workmen who are not chained to the spot, will fly the city; and we who are bound, like victims to the altar, would prefer banishment, to a sentence that may consign us to a prison for years, and deprive us of credit and character for life!

MR. RECORDER. If the law is, as laid down by the opening counsel for the prosecution, and the defendants are guilty, as stated in the indictment, punishment will and ought to follow. If the jury listen to the fact and the law, and are satisfied to find a verdict of guilty, they are not to consider the punishment. That is the province of the court, to direct, and the duty of the judge to pronounce. If the masters are criminal for a combination, as has been intimated, they are equally liable upon conviction to punishment. The law is equal to

all, rich and poor. The right of association is also equal. You ought not to address their passions on a point of law.

MR. RODNEY. Sir, I am incapable of touching the feelings, or exciting the passions of the jury. I possess no such powers. Nature has not been so bountiful to me. I was pressing a point upon the consideration of the jury, of the first importance to my clients, and I apprehend within the fair province of an advocate. It is not my interest, nor would it comport with my character, holding a seat within this bar, to stir up any opposition against the due course of proceedings, or the legal, settled practice of the court. I am sure, sir, you know me better.

The RECORDER. I do sir.

MR. RODNEY. Your honour will recollect, I denied the law, urged on the part of the prosecution, and disputed their authorities under such circumstances, I have [123] a right to expatiate on the extreme hardships of my client's case, of which you must be sensible. The court listened to the mournful tale of Mr. Bedford's losses, and the melancholy story of Mr. Harrison's distresses. If it were not regular to permit the jury to hear these doleful ditties, why was the counsel suffered to recite them? I must be allowed the privilege of a set-off when they descant on the loss of the profits on the 4000 dollar contract, I must be permitted to reply, that they lose a little money and we lose our living. In this manner I pay them in their own coin. It is regular currency, and no counterfeit.

Gentlemen, you have a most solemn and all important question, submitted to your consideration and decision. You have heard the testimony and patiently attended to the various facts stated by the witnesses. You will

hear, after the argument is closed, the sentiments of the court. I shall always inculcate a just, manly and respectful deference to their opinions, even in a criminal case, but not an implicit, humble and servile submission. You will remember, that you have a constitutional power to decide the fact and the law. You are bound by the most solemn and sacred obligations, to guard and to watch with vestal vigilance your privileges. The court will zealously maintain their just rights, to use the language of a great and good lawyer, "if the opinion of the judge must rule the verdict, the trial by jury would be useless." You are pledged to your country and your God, to give a verdict according to the sincere unbiassed dictates of your consciences. Should you give a verdict in favour of the defendants, no earthly power can set it aside. If you acquit us, we shall stand acquitted indeed. Let me beseech you, to remember, that the precedent which you set, will be an example to future juries. The law which you establish in this case may hereafter be executed on yourselves. Your children, or your children's children, may fall victims to your decision. When at the prison door, they are uttering with tears in their eyes, the language of complaint against the hard sentence that consigns them to a jail, they will be told that you their fathers had pronounced their doom!

[124] I am not unacquainted with the argumentative talents of the concluding counsel. I am aware of the zeal and ability with which this prosecution will be pressed. But I see men of intelligence and integrity on this jury, who have firmness and independence, and who will not suffer their minds to be warped by any exertions of counsel.

“ . . . . . Wealthy men,  
That have estates to lose, whose conscious thoughts  
Are full of inward guilt, may shake with horror,  
To have their actions sifted, or appear  
The judge: But we that know ourselves  
As innocent as poor . . . that have no fleece,  
On which the talons of the griping law  
Can sure take hold, may safely smile on all  
That can be urged against us.”

One word in reply to the observations on the subject of aliens. From the moment we declared independence, we stood with open arms to receive the oppressed of all nations and countries. I shall always rejoice in giving them a hearty welcome to our free shores. We want workmen of every kind. The harvest is abundant, but the labourers are few. Let us preserve this asylum. . . It is the last retreat of freedom and liberty. If, notwithstanding the blood and treasure expended, to release us from worse than Egyptian bondage, we still lust after the flesh pots, we may adopt the English code entire, and return to servitude. I am labouring to prevent this fatal reverse, but if you will bring us again under the yoke, the fault will then be yours, and the consolation mine, that I endeavoured to prevent it, altho' I must suffer in common with yourselves.

I agree with the recorder most perfectly in one sentiment, that the law should be no respecter of persons . . . like the light of the sun, it should shine on all. Whether they are as rich as Croesus, or as poor as Belisarius . . . whether their complexions be as black as jet, or as white as the driven snow!

I call on you, then, in the name of the law which we have not violated, by that justice which you are

sworn to dispense, for a verdict of acquittal. This will encrease our commerce, encourage our manufactures, and promote the peace and prosperity of this flourishing city.

In the fullest confidence that such will be your verdict, I here most cheerfully submit the case, without any further observations, to your decision.

[125] MR. INGERSOL. It is an observation as old as trite, but perfectly true, that the understanding is not to be trusted when the passions are engaged. Mr. Rodney has pursued the maxim of the ancient orators of Rome, to make his clients the favourites of the audience; in this mode of defence he has been ingenious and impressive.

Confident in the merits of my cause, asking no favour for my clients I shall not imitate the example. I will endeavour to comprise my arguments into as short a space as possible: I will endeavour to avoid uttering a word that shall not bear directly upon the cause, as the facts appear in evidence, and the application of the law to that evidence.

Extremes are frequently separated by very narrow limits; virtues are sometimes confounded with their opposite vices; we need not go abroad to know that the most licentious acts are perpetrated under the sacred name of liberty. I will tell you my sentiments, on what has been the subject of much declamation, without reserve. I say, that clubs and self-constituted societies are legal, useful, and proper to be encouraged; you cannot reach the defendants on that ground, for my part I will not attempt it.

If, however, they usurp power, abridge the rights of others to extend their own, it is an aristocracy not

the less detestable, that it moves in a small sphere. When an association of men, whether incorporated or not, call it freedom when only themselves are free . . . I shall oppose them as long as I can speak out my sentiments. Let them confine themselves within the rule of law, let them exercise their legal right, and they never will be molested by me.

The defendants formed a society, the object of which was . . . What? That they should not be obliged to work for wages which they did not think a reasonable compensation? No: If that was the sole object of the society, I approve it. . . No man is to work without a reasonable compensation: they may legally and properly associate for that purpose. But when we allow the rights of the poor journeymen, let us not forget those of the rich employer, with his wedges of gold, his bars of silver, [126] and his wings of paper stock, mentioned by Mr. Rodney: no, we will not do that. The picture of justice which is there . . . no, it is removed to Lancaster<sup>51</sup> . . . is represented blind, incapable of discriminating between the parties by appearances of wealth or poverty . . . she feels the merits of the cause, as these preponderate in her Golden scales. If they go beyond this, and say we will not work, but we will compel the employers to give more, not according to contract, but such as they separately think themselves entitled to receive.

Let me here make one remark, not in the regular course of my argument, but which may be useful in removing improper impressions from your minds. You have been told of the danger of a conviction, and cautioned against subjecting the defendants to the vil-

<sup>51</sup> There was formerly the State arms, surmounted with the emblem of justice, over the judges' seat, now fixed in the representative chamber at Lancaster.

lanous judgment which disqualifies a man from being a witness, a juror; which subjects his lands to waste, and his house to be rased, &c. This is all a phantom; no such thing can take place here . . . the punishment may be fine and imprisonment, or fine, or imprisonment, and that fine may be one cent. You will find, when you hear the common law explained, that common law and common sense are the same thing. When a conspiracy to injure another by fraud, trick, or perjury, was entered into, was by the ancient common law so punished; but at this day, it is not so even in England.

The first feature of compulsion in this society, to compel the employers to give the wages they demand . . . is, that strangers are forced to join their body on the penalty of embarrassment, and being denied the means of earning their own support . . . the members are denied the liberty of separating, and their rules are enforced by pains, penalties, and fines; threats, and even violence. It has appeared to you, that the public peace has been violated by the members of the society as well upon the journeymen as the employers. . . And the rising trade, prosperous manufactures, and flourishing commerce of the city, has been interrupted by the defendants, going beyond the line established by law. I have no hostility against these men, they are a valuable and useful part of the community; [127] they ought to be, and will be encouraged and protected. I make no attempts to take away their rights, I only say they must not trespass on the rights of their employers.

I shall, for perspicuity sake, class my observations under two heads. First, whether any conspiracy exists, and what is its object, nature, and extent? Second,

What part have the defendants, according to the evidence, taken in carrying into execution such combination?

In the first place, what is this society, so terrible in its effects, so secret in its formation, and which exercises an authority which the legislature could not confer? You shall have no fanciful statement by me: I discard my own evidence for the present: I take the representation of their own leading witness . . . James Keagan said, (for I asked him myself) "that if a journeyman comes here from a neighbouring state, or Europe, we insist that he shall join our society." He goes on and states, "or we will neither work, nor suffer any of the society to work with him in any shop where he is employed, until he is turned away." And that the society is to fix the rate of wages, and whoever deviates from the rule prescribed, is liable to all the penal consequences as if he never had been a member.

Now, what is the complaint? Last October or November, in conformity with this article of the constitution, they entered into an agreement to obtain an advance of wages, and to punish, as heretofore stated, all who shall contravene this regulation. I pass over without insisting on the aggravating circumstance, that even lodging in the house with the offender is forbidden . . . I pause to consider, whether the combination I have stated is lawful.

We have heard something said of the alien: I say, beckon him over, and protect him. . . When he reaches your shore, treat him kindly. But is this liberal conduct? Is this protection? You shall join the society, or . . . or, in the language of the priest, or we will consider you as the enemy of heaven and of man.

[128] I do not stop to consider what has been said

of the sufficiency of the indictment, that is exclusively for the consideration of the court. At the same time, you ought to know the nature of the charge, otherwise it will be impossible you can with propriety say, guilty or not guilty. The indictment is for a conspiracy: I will give you a definition of the expression, unembarrassed, without being obscured by technical words, Latin or English. 4 Christian's Black. p. 136. Note 4. "Every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy." This is all the definition I want. Recollect, that as to my facts, I do not hazard contradiction in what I say thus far; I am not here stating positions on doubtful and contradictory evidence, I go upon conceded ground.

The constitution is in writing; it is not produced: they have the resolutions and bye laws in their custody: but we did not give them notice to produce it; the defendants are neither president or secretary, but as members they could have access to the book . . . if they thought it material to their defence, no doubt they would have produced it; if they do not, it must be because it would not aid them. But the combination under the name of a turn-out, they have avowed and undertake to justify. Analyze the resolve of the meeting of the 29th of October, 1805; take it member by member, let common sense dictate the result. Let me not be misrepresented, I will endeavour to speak so plain as not to be misunderstood even by the most careless hearer. I disclaim, I reprobate with indignation, the idea that a journeyman shoemaker is obliged to work for less wages than he thinks a reasonable compensation for his time and labour. If they do not get them, they have a right to go to New-York or Bal-

timore. Mr. Rodney says, these things will find their level like water: so they will, if there be no improper combination to force journeymen out of the employer's shop.

The resolution is founded on the constitution, both are virtually included in the vote for a turn-out; the [129] nature of the last must be determined by the character of the two former. In the turn-out there is contained the claim of authority, that every journeyman cordwainer coming into the state shall join the society. What right have they to say this? . . . The stranger is not to make his choice; he is not left to exercise his free will; he is not to regulate his conduct by his own judgment, in this important particular. I am not now advocating the cause of the masters, but of the stranger and alien. How can society justify this conduct? this, says Mr. Franklin, is only saying that they will not keep company with him, and every man is at liberty to select his associates.

It is not so; it is attempting all that is possible by them, adopting the most efficacious means to compel him to join or be starved. They reduce the journeymen to depend on their funds at will, to prevent their starving; let Job Harrison tell his story . . . let him tell what happened. You have heard it from his own lips, I will not reiterate the affecting narrative. It is preventing him from obtaining employ; it is threatening the employer if he engages him as a journeyman. The man himself is distinguished by the opprobrious name of a scab; the shop in which he works is shunned as an infected place.

Smith's *Wealth of Nations* has been read, to shew you that the masters must invariably get the better of the journeymen in a contest for wages; true, it is so;

where labourers are numerous and the work not sufficiently ample for all. But in a country where labourers are scarce, and work encreasing, the stranger who comes into it, must submit to such associations or fall a victim. It is a measure to force from the employer wages he has not contracted to give, by preventing journeymen from going into his service.

They say, it is no compulsion . . . Is it no compulsion on an employer? . . . Where is the employer who would retain one man, and lose twenty? It is true Mr. Bedford did this, but who is the other? . . . When the contest is, whether one man shall be retained or left without work, or whether twenty, when the employer makes [130] a profit in proportion to the number of journeymen working for him, the question admits of but one answer.

The alternative then, presents itself, you must either approve the principle as asserted, or find the turn-out an unlawful agreement. As the measures they adopt are fairly to be considered of a compulsory nature. . . The present question is, is such a proceeding lawful? Here a great subject of inquiry offers for consideration. I contend, that to force a man to become a member of any society whatever, is inconsistent with the inprescriptible rights of man.

Weigh this matter fairly in the scales of reason; apply it to societies the most important, or to those of a secondary and less important description. Consent freely and voluntarily given, is the only legitimate foundation for governmental authority. Is it in the United States, the asylum of liberty, that I hear a contrary doctrine insisted upon, by those who call themselves its most zealous defenders.

[Digression omitted.]

An allusion was made to a remark of Mr. Hopkinson, that this was not an incorporated society. We have two modes of making incorporations: under a standing rule of the act of assembly, by the attorney general, judges and governor: for charitable and religious institutions, or by special law of the legislature for instances not included within the general provision or the enumerated cases. Do any of these incorporated companies compel people to join them? Are they less privileged in this respect, than voluntary associations that are not incorporated?

[131] Say the opposite counsel, if we are right in our complaint, we are wrong in the selection we have made of a remedy. I insist it has not one, or some, but all the characteristic features of a conspiracy. Was it no damage to reduce Mr. Bedford's journeymen from twenty-four to four or five? To have a capital left unemployed, and an exportation of such magnitude, that one employer sent out 4000 dollars a year, cease at a moment?

If a damage, say the opposite counsel, it was no injury; we had a right to take the measure whatever you might lose by it. It was both injury and damage, as you had no right to interfere between the employer and others engaged in his employ. You did not content yourself with not keeping company with those employed, who did not conform to your rules, you scabbed the shop, and the master as well as the journeymen.

Your resolution engaged you to refuse eating at table with the supposed offender, or lodging in the same house; and excluded him even from your charity. This is not punishment! It is a species of civil excommunication, a proscription; the most determined spirit must yield to so unequal a contest. The most terrible

sentence in the Roman commonwealth, was denounced in the terms in interdicting the criminal from the use of fire and water.

It was not only a confederacy to injure individuals, it was an agreement to do acts which are unlawful. It is a maxim of the common law, so much abused and so little understood . . . *Eve utere tuo ut aliena non ledas*; exercise your own rights, but take care not to injure others.

It is a measure highly prejudicial to the community, and if not effectually checked, congress will be obliged to take off the duties on articles made of leather, so far as respects boots and shoes, instead of stopping the importation, as is contemplating in a resolution now before them. Foreign manufactures must be introduced, and domestic laid aside, or much discouraged. The master employer may be injured, but the journeyman will be ruined; the former can best stand the shock, and Mr. Franklin has read Smith's *Wealth of Nations* to prove it.

[132] An attempt has been made to find some apology for this combination, the proceedings are imputed to the masters associating.

Now, what are the particular acts brought home by the evidence, to the defendants in this indictment? They are of two kinds . . . the proceedings in the society, and the part they took out of the society: this will be found to include them all. It applies to Mr. Dubois, he was a member of the society as early as the year 1795, active, influential, and leading; the others are proved to have acted at the late turn-out.

This is a proper opportunity to trace the rise, progress, and present state of the business, from which it will appear a precipitate measure, unadvised and un-

just. I was happy to obtain from their witness data: facts on which we can reason, free from the prejudices of the parties. I take the amount of wages from Mr. Kegan, the prices from Mr. Young; my reasoning and calculation will therefore be founded entirely on their own evidence.

Here we have the particulars perfectly distinct, for the same work, plain boots ten or twelve years ago were 12s. 9d. at the time of the last turn-out and now £1 2s. 1½d. Here is an encrease of wages almost double. I ask, why I appeal to you. The pretence is, the rise of everything else. I say marketing was as high in 1796 and 1794 as since; boarding the same; house rent not more; carpenters work and materials cheaper now than then: this I know by actual experience, having built at considerable expence during the first period. And you will recollect that congress sat here at that time; all the officers of the executive government; the legislature of the state; the supreme court, of the United States, and all its officers. Persons having business to transact with them, were here itinerant; these circumstances encreased, rather than depressed the prices at that time. In their work there is no difference, except that formerly boots had stitched rands worth 1s. 6d. now this work is omitted.

Another ground urged, was the rise in the price of boots; this will fail them also on a fair investigation. Mr. Young says, boots that formerly sold from five to five and half dollars, now bring seven dollars; what formerly brought six and a half, now sell at nine dollars. [133] Let us compare . . . to keep the same proportion in the rise of prices as wages, the boots formerly at five and five and a half, must sell at this time, instead of seven, at eight dollars seventy cents.

To observe the same proportion in the other instance, the rise should be from six and a half to twelve dollars, and one cent, instead of nine dollars a difference of three dollars and more, less in the rise of price than wages, which the defendants insisted should be increased.

You see clearly then, that this valuable class of men (and such they certainly are) the journeymen shoemakers, are stronger in their passions than in their judgment, for of all their witnesses not one appeared to have made these calculations. Further, to shew the great impropriety of their proceedings, let it be recollected, that the price of fancy-top-boots was settled, as all those things ought to be, by agreement between the employers and journeymen. The same witness, Mr. Kegan, says, that on this same article they insisted on a rise of three quarters of a dollar on the price fixed by themselves; this was one of the grievances that occasioned the last turn-out, and for some time kept the city in an uproar. They ought not to be obliged to work except for wages satisfactory to themselves, nor ought the employers to be obliged to pay beyond their contract.

This at most, it may be said, will in part apply only to Mr. Dubois; to constitute what is called a conspiracy you must have two implicated. I doubt the principle, and proceed to shew, that every other defendant is equally liable to the charge, as Mr. Dubois. At the turn-out of 1799, they were all members of the society, distinguished in the cabinet or in the field, in forming resolutions and carrying them into execution. But here is a justification proudly insisted on; it was a turn-out, not to raise, but to prevent a reduction of wages, by the combination of employers. I deny both the

premises and conclusion; it is not so; if it was, it would not justify the measure: if an alteration of contract is reasonable, it must be done by contract, not by compulsion. Look at the wages; how came the wages at that rate, by a previous turn-out in 1798? The employers, only wanted to get back to the contract price.

[134] What apology for the last turn-out, it was avowedly to raise their wages not to avoid reducing them? Was it the provocation of the masters in 1799? no; the masters had submitted, as they have proved by the evidence given in by themselves. This was an example which they ought to have imitated, so far they ought to have gone further was not justifiable.

Further, let their own proposals speak for themselves; the ground and extent of their complaints, and the remedy proposed. A notification ushers into day the determinations of the body, to dictate the terms on which alone the work shall be done. All consequences are now legally, constructively, and reasonably imputable to every man who has participated in the transaction. I will then proceed to examine the evidence as applied to the several defendants; I begin with the first named in the indictment—Mr. Pullis. The first witness, Mr. Harrison, says expressly, that Mr. Pullis belongs to the association, the objects of which are to support present wages, and to obtain such wages from time to time, as they may think proper to ask. This witness came into the country in 1794, and he mentions that wages were raised; he had the information from Mr. Bedford, before he had been long enough to know that there was such a society as this body of associated journeymen cordwainers. From the same source of correct information, we find that no longer a period had elapsed than from 1794 to 1798, than another turn-

out took place to raise wages. A third in 1799, to prevent their being brought back to the contract price from which they had been raised by a turn-out in 1798.

Here let me answer a suggestion of Mr. Franklin, that Mr. Blair, a prosecutor himself, committed the offence for which he prosecutes; he forgets that Mr. Blair has been an employer more than four years, and therefore that the charge is altogether a mistake. And here this witness mentions an anecdote of the compulsory nature of their proceedings, which is not only enough to convince the judgment, but to affect a heart of adamant. Dobbins had lost his wife, his children were out at board, himself making soldiers shoes or boots . . . yet he was compelled to desist; tears could not [135] avert the sentence, because Mr. Case, for whom he wrought, was not in their good opinion. He not only might not work at under wages in making shoes and boots, but not at full wages in making even a candle box for Mr. Case.

Their measures are said to be not compulsive; what then are they? Recollect the circumstance . . . Mr. Bedford is notified, "you have scabs in your shop, turn them off, or" . . . Well, he neglects to comply: . . . the shop is scabbed: he is left without his journeymen: in a great proportion, ruin awaits him: he talks of investing his capital in the dry good business. I shall be driven from the city, he tells the witness, if this continues; and concludes with an honourable declaration – at all events, I will not discharge you let the consequences be what they may; while you do your duty, we will sink or swim together! The employer is obliged to make a journey to the southward; his time being unemployed; he comes home with orders he cannot fulfill.

They say, no force was employed – Force, yes, they

threw a potato through the window which passed near his face, and that the author of the malicious injury might be known, it contains the ends of half a dozen broken shoemaker's tacks. For a further illustration of this point see the testimony of William Forbey, Samuel Logan, and Andrew Dunlap. I understand that the shop of Mr. Bedford remained under the interdict two or three years, during which his business was in a great degree suspended. Mr. Harrison remained a scab until we find him humbly soliciting restoration, by means of secretary Dempsey in 1802, at Trenton.

We now reach the last turn-out, which, it is true, Mr. Dubois opposed, but it is equally true, that he afterwards was a zealous committee man to carry it into effect. It is true, no men or shops were scabbed at the last turn-out, because the journeymen yielded; but the combination was formed, and the business suspended in a great degree for six or eight weeks. As implicated in the conspiracy of last autumn, I prove by this witness, George Pullis, John Harket, John Hepburn, Dubois, Undrel Barnes, and Keimer. The [136] votes, resolutions, notifications, domiciliary visits, and tramping committees, are the effects of the measures taken by the defendants. By another witness, James Cummings, we fill the chasm, and add the remaining names of Peter Pollen and George Snyder.

By implication of law, every member is equally responsible for all the proceedings; to this point, is 2 M'Nally, p. 610 and 636. But having positive proof as to the defendants, it supersedes the necessity of relying on implication: as to breaches of the peace, we have half a dozen in evidence; it is not necessary for me to recapitulate, you have heard the proof. Mr. Barnes threatened another rise of half a dollar, when he was giving notice of the rise in last October. Mr.

Blair's testimony proves a beating of his journeymen, for being scabs, on the evening of the day consecrated to holy rest, and avowed by the members of the society.

Mr. Franklin told you this was a cause of importance; it is eminently so; and it depends on your verdict, whether this manufacture shall flourish or decay. These defendants call on an employer, Mr. Montgomery, who had orders at the time, from St. Thomas's, New-Orleans, and Charleston, and I pray you to attend to what passes. Pollen, Snyder, Barnes and Pullis, if not Harket also, are the men of the defendants who call, and I will give you, without comment, their language. They demanded certain wages, and asked whether the employer would or would not give them? and added, "if they will not we will take means to make them."

Though it is not necessary to the cause, yet for public satisfaction, I will shew, that the wages they wish raised, are high enough; that a rise would be prejudicial to the employer, to the public, and more particularly to themselves. We have had from the opposite counsel an explanation of what may be called a custom, 7 Viner, p. 165, A 2. Is it to the common law, as found in English books, that the defendants appeal for a defence? That is, *Jus non scriptum*, and made by the people only of such place where the custom is. Have the citizens of Philadelphia imposed upon the employers the duty of paying the wages demanded by the defendants? We claim no immemorial custom: we say it is a matter of contract, neither employers or journeymen have a right to insist, [137] or the other shall pay or receive a rate of wages, to which they have not freely consented.

We are told, and truly told, from 3 Burr. p. 1698

and 1731, that private injuries are not to be redressed by indictment; but the question still remains, whether the combination of the defendants, falls under the one or the other denomination? Under the class of private injuries, add our antagonists, and in support of the assertion they cite the case of *Hart vs. Aldridge*, from Cowp. p. 54. Not a step can they progress, without calling to their aid the common law, which expressly determines their combination to be a conspiracy. See 1 Hawk. p. 348. An action for seducing servants! It is not our case; we do not complain of individual seductions. We charge a combination, by means of rewards and punishments, threats, insults, starvings and beatings, to compel the employers to accede to terms, they the journeymen present and dictate. If the journeymen cordwainers may do this, so may the employers; the journeymen carpenters, brick-layers, butchers, farmers, and the whole community will be formed into hostile confederacies, the prelude and certain forerunner of bloodshed and civil war.

My learned and accurate colleague, is charged with the absurdity of saying, that whatever is done by several is a criminal conspiracy. The position was, that the same things may become criminal, when the subject of a combination, which are innocent, as the occasional acts of an individual. The case of *Macklin*, the player, in 2 M'Nally, p. 634, exemplifies with great propriety the distinction. I may hiss or clap a player, but may not enter into a combination to drive a particular man from the stage.<sup>52</sup>

Instances are mentioned by our antagonists, which answer the same purpose. A student comes to town, the law society insist he shall join or they will put a

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<sup>52</sup> See this case in Appendix G.

mark of infamy upon him. . . He shall be shunned as a murderer, or one infected with a disease whose society is pollution. We will hunt him from office to office; if we meet him in the street, we will insult him; and we will quit the study of every lawyer in which he is suffered to read a book.

[138] Another case mentioned is, if possible, replete with yet stronger conclusions against those who use the arguments against us. It was said, any one lawyer may refuse to be counsel for the journeymen shoemakers, prosecuted at this time, might the whole bar have entered into a combination to refuse their aid; with this addition, that if a lawyer comes here from a neighbouring state he shall join in this confederacy, or we will unitedly declare hostility and embarrass him in every practicable method to induce him to abandon your defence.

The cause next assumes a seriousness that is alarming; the existence, operation and respectability of the common law, is directly attacked. The counsel are right in their plan of defence; there is a direct collision between the law and the conduct of the defendants . . . which . . . is to controul? is the question. You have heard a book cited against us, which contains the warmest eulogium upon the common law ever penned by man . . . it will be found in the third volume of the late judge Wilson's work, p. 16 and 18: also, 2 Wil. p. 43, 47. Whence comes this enmity to the common law? It is of mushroom growth. Look through the journals of congress during the revolutionary war, you will find it claimed as the great charter of liberty; as the best birthright and noblest of inheritance. Caesar A. Rodney, the revolutionary patriot, hazarded his life to secure and perpetuate the blessing. What are its characteristic features, possessed

exclusively by itself? You have heard of Mr. Curran, the friend of the people, the orator of the age, let him speak of English criminal justice. See Curran's *Forensic Eloquence*, p. 375.

But the common law is in some respects faulty, as in the case cited from 4 Black. p. 124, and 4 *Inst.* p. 143. The sun too has its spots, but will you extinguish that luminary from the firmament? But the common law, as adopted and practised in Pennsylvania, is the least exceptionable criminal code in the world. In England, it is said to be sanguinary and cruel. In England there are 176 offences punishable [139] by death, of which there are only 16 so punished by the common law.

Why do I love the common law, especially the criminal part? I will tell you, and I think you will say that I have reason on my side, as I am one of the people. Because, as Mr. Randolph says, it enabled Horne Took, Thomas Hardy and Mr. Thelwall, with a jury, to pass unhurt through the flames of ministerial prosecution. Because, to the common law we are indebted for trial by jury, grand and petit, without the unanimous consent of which latter, I cannot be convicted. . . . Because, it secures me a fair trial by challenges, the laws of evidence, confronting me with my accuser, and exempting one from accusing myself, or being twice liable to trial for the same offence. These things would constitute a redeeming spirit against all attacks, were its faults twice as numerous as they are.

It condemns these men, it is said, to incapacity as witnesses and jurors . . . strange misunderstanding! a fine of our court is the only necessary consequence. It is not otherwise in England, as I remarked before, unless the conspiracy is for lying or perjury.

Abolish the common law, judging not by instances,

but by principle, where are you? Shew me an indictment of any kind, even for assault and battery, it is bottomed on common law; with us we have no cause of proceeding in criminal cases, but by the modes of the common law, except in cases of murder or treason. The legislature may alter the system, but while it remains it is the law of Pennsylvania.

[Final appeal omitted.]

[140] MR. LEVY. This laborious cause is now drawing to a close after a discussion of three days; during which we have had every information upon the facts and the law connected with them, that a careful investigation and industrious research have been able to produce. We are informed of the circumstance and ground of the complaints, and of the law applicable to them. It remains with the court and jury, to decide what the rule of law is; and whether the defendants have, or have not violated it. In forming this decision, we cannot, we must not forget that the law of the land is the supreme, and only rule. We live in a country where the will of no individual ought to be, or is admitted, to be the rule of action. Where the will of an individual, or of any number of individuals, however distinguished by wealth, talents, or popular fame, ought not to affect or controul, in the least degree, the administration of justice. There is but one place in which to determine whether violation and abuses of the law have been committed . . . it is in our courts of justice: and there only after proof to the fact: and consideration of the principles of law connected with it.

The moment courts of justice loose their respectability from that moment the security of persons and of property is gone. The moment courts of justice have

their characters contaminated by a well founded suspicion, that they are governed by caprice, fear or favour; from that moment they will cease to be able to administer justice with effect, and redress wrongs of either a public or a private nature. Every consideration, therefore, calls upon us to maintain the character of courts and juries; and that can only be maintained by undeviating integrity, by an adhesion to the rules of law, and by deciding impartially in conformity to them.

Very able research has been made in this enquiry, and every principle necessary for your information has been laid before you. As far as the arguments of counsel apply to your understanding and judgment, they should have weight: but, if the appeal has been made [141] to your passions, it ought not to be indulged. You ought to consider such appeals as an attack upon your integrity, as an attempt to enlist your passions against your judgment, and, therefore, listen to them with great distrust and caution. If this enquiry had been confined to its proper object and its merits, it need not have been extended to the length to which it has been drawn out, but many circumstances foreign to the case, have been brought into view. An attempt has been made to shew that the spirit of the revolution and the principle of the common law, are opposite in this case. That the common law, if applied in this case, would operate an attack upon the rights of man. The enquiry on that point, was unnecessary and improper. Nothing more was required than to ascertain what the law is. The law is the permanent rule, it is the will of the whole community. After that is discovered, whatever may be its spirit or tendency, it must be executed, and the most imperious duty demands our submission to it.

It is of no importance whether the journeymen or

the masters be the prosecutors. What would it be to you if the thing was turned round, and the masters were the defendants instead of the journeymen? It is immaterial to our consideration whether the defendants are employers or employed; poor or rich. . . . Whether their numbers are diminutive or great. If they have done wrong, and were ten thousand strong, I should look upon myself guilty of a breach of my oath and of the law, if their numbers protected them from justice or prosecution, from plainly declaring my opinion, if I thought them guilty: while I sit here, however distinguished for wealth, or talents, respectability, or numbers the defendants may be, if they have violated the law. . . . I trust I shall have firmness enough to say so, regardless of what the world may think of me or of popular abuse. This is the duty of the judge, and also of the jury. If they decide one way when one man is implicated, and another when twenty, the rights, the liberties and privileges of man in society, can no longer be protected within these hallowed walls. Numbers would decide all questions of duty and property, and causes would be hereafter adjudged, not by the weight of their reason, but according to the physical [142] force of the parties charged. This jury will act without fear or favour; without partiality or hatred; regardless whether they make friends or enemies by their verdict—they will do their duty—they will, after the rule of law has been investigated and laid down by the court, find a verdict in conformity to the justice of the case.

If this, gentlemen, is your disposition, there are only two objects for your consideration. First. What the rule of law is on this subject? Second. Whether the

defendants acted in such a manner as to bring them within that rule?

(Here the recorder referred to books of authority.)

No matter what their motives were, whether to resist the supposed oppression of their masters, or to insist upon extravagant compensation. No matter whether this prosecution originated from motives of public good or private interest, the question is, whether the defendants are guilty of the offences charged against them? A great part of the crimes prosecuted to trial in this court, are brought forward, I believe, from improper motives: for example, the prosecutions against tippling houses are generally occasioned by a difference taking place between the buyer and the seller, when the one is nearly as much in fault as the other. In the case of the crime of treason, it is often one of the parties who impeaches the other, and a quarrel about the felonious booty often leads to the detection of the thief. If the defendants are guilty of the crime, no matter whether the prosecutor brings his action from motives of public good, or private resentment. The prosecutors are not on their trial, if they have proved the offence, alleged in the indictment against the defendants; and if the defendants are guilty, will any man say, that they ought not to be convicted: because the prosecution was not founded in motives of patriotism? Certainly the only question is, whether they are guilty or innocent. If they are guilty and were possessed of nine tenths of the soil of the whole United States, and the patronage of the union, it is the bounden duty of the jury to declare their guilt. . . .

[143] What are the offences alleged against them? They are contained in the charges of the indictment.

(Here he recited from the indictment the first and second counts.)

These are the questions for our consideration, and it lies with you to determine how far the evidence supports the charges, and how the principles of the law bear upon them.

It is proper to consider, is such a combination consistent with the principles of our law, and injurious to the public welfare? The usual means by which the prices of work are regulated, are the demand for the article and the excellence of its fabric. Where the work is well done, and the demand is considerable, the prices will necessarily be high. Where the work is ill done, and the demand is inconsiderable, they will unquestionably be low. If there are many to consume, and few to work, the price of the article will be high: but if there are few to consume, and many to work, the article must be low. Much will depend too, upon these circumstances, whether the materials are plenty or scarce; the price of the commodity, will in consequence be higher or lower. These are the means by which prices are regulated in the natural course of things. To make an artificial regulation, is not to regard the excellence of the work or quality of the material, but to fix a positive and arbitrary price, governed by no standard, controuled by no impartial person, but dependant on the will of the few who are interested; this is the unnatural way of raising the price of goods or work. This is independent of the number of customers, or of the quality of the material, or of the number who are to do the work. It is an unnatural, artificial means of raising the price of work beyond its standard, and taking an undue advantage of the public. Is the rule of law bottomed

upon such principles, as to permit or protect such conduct? Consider it on the footing of the general commerce of the city. Is there any man who can calculate (if this is tolerated) at what price he may safely contract to deliver articles, for which he may receive orders, if he is to be regulated by the journeymen in an arbitrary jump from one price to another? It renders it impossible for a man, making a contract for a [144] large quantity of such goods, to know whether he shall lose or gain by it. If he makes a large contract for goods to-day, for delivery at three, six, or nine months hence, can he calculate what the prices will be then, if the journeymen in the intermediate time, are permitted to meet and raise their prices, according to their caprice or pleasure? Can he fix the price of his commodity for a future day? It is impossible that any man can carry on commerce in this way. There cannot be a large contract entered into, but what the contractor will make at his peril. He may be ruined by the difference of prices made by the journeymen in the intermediate time. What then is the operation of this kind of conduct upon the commerce of the city? It exposes it to inconveniences, if not to ruin; therefore, it is against the public welfare. How does it operate upon the defendants? We see that those who are in indigent circumstances, and who have families to maintain, and who get their bread by their daily labour, have declared here upon oath, that it was impossible for them to hold out; the masters might do it, but they could not: and it has been admitted by the witnesses for the defendants, that such persons, however sharp and pressing their necessities, were obliged to stand to the turn-out, or never afterwards to be employed. They were interdicted from all business in future, if they did not con-

tinue to persevere in the measures, taken by the journeymen shoemakers. Can such a regulation be just and proper? Does it not tend to involve necessitous men in the commission of crimes? If they are prevented from working for six weeks, it might induce those who are thus idle, and have not the means of maintenance, to take other courses for the support of their wives and children. It might lead them to procure it by crimes – by burglary, larceny, or highway robbery! A father cannot stand by and see, without agony, his children suffer; if he does, he is an inhuman monster; he will be driven to seek bread for them, either by crime, by beggary, or a removal from the city. Consider these circumstances as they affect trade generally. Does this measure tend to make good workmen? No: it puts the botch incapable of doing justice to his work, on a level with the best tradesman. The master must give the same wages to each. Such a [145] practice would take away all the excitement to excel in workmanship or industry. Consider the effect it would have upon the whole community. If the masters say they will not sell under certain prices, as the journeymen declare they will not work at certain wages, they, if persisted in, would put the whole body of the people into their power. Shoes and boots are articles of the first necessity. If they could stand out three or four weeks in winter, they might raise the price of boots to thirty, forty, or fifty dollars a pair, at least for some time, and until a competent supply could be got from other places. In every point of view, this measure is pregnant with public mischief and private injury . . . tends to demoralize the workmen . . . destroy the trade of the city, and leaves the pockets of the whole community to the discretion of the concerned. If these evils were unprovided for by

the law now existing, it would be necessary that laws should be made to restrain them.

What has been the conduct of the defendants in this instance? They belong to an association, the object of which is, that every person who follows the trade of a journeyman shoemaker, must be a member of their body. The apprentice immediately upon becoming free, and the journeyman who comes here from distant places, are all considered members of this institution. If they do not join the body, a term of reproach is fixed upon them. The members of the body will not work with them, and they refuse to board or lodge with them. The consequence is, that every one is compelled to join the society. It is in evidence, that the defendants in this action all took a part in the last attempt to raise their wages; . . . Keimer was their secretary, and the others were employed in giving notice, and were of the tramping committee. If the purpose of the association is well understood, it will be found they leave no individual at liberty to join the society or reject it. They compel him to become a member. Is there any reason to suppose that the laws are not competent to redress an evil of this magnitude? The laws of this society are grievous to those not inclined to become members . . . they are injurious to the community, but they are not the laws of Pennsylvania. We live in a community, where the people in their collective capacity give the first momentum, and their [146] representatives pass laws on circumstances, and occasions, which require their interference, as they arise.

But the acts of the legislature form but a small part of that code from which the citizen is to learn his duties, or the magistrate his power and rule of action. These temporary emanations of a body, the component mem-

bers of which are subject to perpetual change, apply principally to the political exigencies of the day.

It is in the volumes of the common law we are to seek for information in the far greater number, as well as the most important causes that come before our tribunals. That invaluable code has ascertained and defined, with a critical precision, and with a consistency that no fluctuating political body could or can attain, not only the civil rights of property, but the nature of all crimes from treason to trespass, has pointed out the rules of evidence and the mode of proof, and has introduced and perpetuated, for their investigation, that admirable institution, the freeman's-boast, the trial by jury. Its profound provisions grow up, not from the pressure of the only true foundations of all knowledge, long experience and practical observation at the moment, but from the common law matured into an elaborate connected system. Law is by the length of time, it has been in use and the able men who have administered it. Much abuse has of late teemed upon its valuable institutions. Its enemies do not attack it as a system: but they single out some detached branch of it, declare it absurd or intelligible, without understanding it. To treat it justly they should be able to comprehend the whole. Those who understand it best entertain the highest opinion of its excellence. . . . No other persons are competent judges of it. As well might a circle of a thousand miles diameter be described by the man, whose eye could only see a single inch, as the common law be characterized by those who have not devoted years to its study. Those who know it, know that it regulates with a sound discretion most of our concerns in civil and social life. Its rules are the result of the wisdom of ages. It says there may be cases in which what one man may do with of-

fence, many combined may not do with impunity. It distinguishes between the object so aimed at in different transactions. If the purpose to be obtained, be an object of individual interest, it may be fairly attempted by an individual. . . . Many are prohibited from combining for the attainment of it.

[147] What is the case now before us? . . . A combination of workmen to raise their wages may be considered in a two fold point of view: one is to benefit themselves . . . the other is to injure those who do not join their society. The rule of law condemns both. If the rule be clear, we are bound to conform to it even though we do not comprehend the principle upon which it is founded. We are not to reject it because we do not see the reason of it. It is enough, that it is the will of the majority. It is law because it is their will – if it is law, there may be good reasons for it though we cannot find them out. But the rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. Hawkins, the greatest authority on the criminal law, has laid it down, that a combination to maintaining one another, carrying a particular object, whether true or false, is criminal . . . the authority cited from 8 *Mod. rep.* does not rest merely upon the reputation of that book. He gives you other authorities to which he refers. It is adopted by Blackstone, and laid down as the law by Lord Mansfield 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it.

In the profound system of law, (if we may compare small things with great) as in the profound systems of Providence . . . there is often great reason for an institution, though a superficial observer may not be able to discover it. Obedience alone is required in the

present case, the reason may be this. One man determines not to work under a certain price and it may be individually the opinion of all: in such a case it would be lawful in each to refuse to do so, for if each stands, alone, either may extract from his determination when he pleases. In the turn-out of last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence, that they were bound down by their agreement, and pledged by mutual engagements, to persist in it, however contrary to their own judgment. The continuance in improper conduct may therefore well be attributed to the combination. The good sense of those individuals was prevented by this agreement, from having its free exercise. Considering it in this point of view, let us take a look at the cases which have been compared to this [148] by the defendants counsel. Is this like the formation of a society for the promotion of the general welfare of the community, such as to advance the interests of religion, or to accomplish acts of charity and benevolence? Is it like the society for extinguishing fires? or those for the promotion of literature and the fine arts, or the meeting of the city wards to nominate candidates for the legislature or the executive? These are for the benefit of third persons the society in question to promote the selfish purposes of the members. The mere mention of them is an answer to all, that has been said on that point. There is no comparison between the two; they are as distinct as light and darkness. How can these cases be considered on an equal footing? The journeymen shoemakers have not asked an encreased price of work for an individual of their body; but they say that no one

shall work, unless he receives the wages they have fixed. They could not go farther than saying, no one should work unless they all got the wages demanded by the majority; is this freedom? Is it not restraining, instead of promoting, the spirit of '76 when men expected to have no law but the constitution, and laws adopted by it or enacted by the legislature in conformity to it? Was it the spirit of '79, that either masters or journeymen, in regulating the prices of their commodities should set up a rule contrary to the law of their country? General and individual liberty was the spirit of '76. It is our first blessing. It has been obtained and will be maintained . . . we will not leave it to follow an *ignus fatuus*, calculated only to mislead our judgment. It is not a question, whether we shall have an *imperium in imperio*, whether we shall have, besides our state legislature a new legislature consisting of journeymen shoemakers. It is of no consequence, whether the prosecutors are two or three, or whether the defendants are ten thousand, their numbers are not to prevent the execution of our laws . . . though we acknowledge it is the hard hand of labour that promise the wealth of a nation, though we acknowledge the usefulness of such a large body of tradesmen and agree they should have every thing to which they are legally entitled; yet we conceive they ought to ask nothing more. They should neither be the slaves nor the governors of the community.

[149] [Digression omitted.]

The sentiments of the court, not an individual of which is connected either with the masters or journeymen; all stand independent of both parties . . . are unanimous. They have given you the rule as they have found it in the book, and it is now for you to say,

whether the defendants are guilty or not. The rule they consider as fixed, they cannot change it. It is now, therefore, left to you upon the law, and the evidence, do find the verdict. If you can reconcile it to your consciences, to find the defendants not guilty, you will do so; if not, the alternative that remains, is a verdict of guilty.

The jury retired, about 9 o'clock, and were directed by the court to seal up their verdict. . . . Next morning the following circumstances took place.

Mr. Franklin requested the jury to be polled.

It was granted by the court.

On calling over the jury list, Mr. Wm. Henderson, the fifth on the Roster, said, The clerk will find a paper inclosed in the bill of indictment containing the verdict of the jury, subscribed with their names. The clerk then read the paper referred to.

The reporter took it down in these words: We find the defendants guilty of a combination to raise their wages, Subscribed by the 12 jurors. (Note by the reporter.)

Calling at the clerk's office, this 21st May, 1806. He learned, the papers above mentioned, was destroyed or missing, and to convince him such papers were of no importance. Mr. Serjeant tore up two verdicts, of a similar nature, in the presence of him and another person saying the court take no cognizance of these sealed verdicts. But after all, the verdict was entered on the back of the bill of indictment – guilty.

And the court fined the defendants eight dollars each, with costs of suit, and to stand committed till paid.

[150] APPENDIX A-REX *vs.* ELIZABETH SARMON

The Court made no difficulty to quash an Indictment, (though attempted, by two or three Counsel to be supported) "For that the Defendant for the space of four hours and more together, on every of the several days specified, (which were the first day of January 29 G.2. and divers other days and times between that day and the day of taking the Inquisition,) with force and arms &c. at London, at the Parish of St. Martin within Ludgate, in the ward of Farringdon without, in London aforesaid, unlawfully injuriously and wilfully did set place and keep a certain person, (whose name was yet unknown to the jurors,) in and upon the common and ancient foot-way on the North-side of the public street there situate, called Ludgate-hill; to deliver out certain printed bills of her occupation, to persons passing that way; which said person so set, placed and kept there, by her the said Elizabeth, did, on the said days and times, remain in and upon the said common foot-way during the several spaces of time aforesaid, delivering and distributing printed bills, as aforesaid; whereby the same foot-way, at those several days and times, was greatly impeded and obstructed; so that the liege subjects of our said Lord the King, there passing and residing, could not so freely go pass and repass in or through the same way, as they ought and were used to do: to the great damage and common nuisance of all the said subjects, and against the peace of our said Lord the King his Crown and dignity." The court held this to be a matter not indictable; and quashed the indictment.

## [151] APPENDIX B

Lord Mansfield. . . The objection to the fourth indictment is given up. The other three stand, all of

them, upon the same ground. Nothing but the *Vi et Armis* implies force, every force and violence is a breach of the peace.

The case of *Rex. v. Bathurst* does not seem to me to lay down any such rule as "that *Vi et Armis* alone implies such a force as will, of itself, support an indictment." There, the fact itself naturally implied force: it was turning and keeping the man out of his dwelling-house; and done by three people. Three of the judges lay a stress upon that circumstance, of its being an entry into a dwelling-house: and the parties who framed the indictment plainly had a view to indict for a forcible entry.

As at present advised, I should think the present case within those that justify the quashing. Coming with a pistol, though possible, is not to be supposed. If there be no doubt upon it, there is no reason to put the defendant to more expence.

Mr. Justice Wilmot thought that it ought to appear to be an indictable offence: for otherwise, in cases where there was no malice, the defendant might be put to a great expence without remedy or satisfaction. The cases cited shew, "that such indictments have been quashed:" and that of *Rex. v. Bathurst* being an entry into a dwelling-house makes that case no authority in this. But this case stands indifferent, "Whether the offence is indictable or not:" whereas it ought to appear upon the face of the indictment "that it is indictable." Therefore he was for quashing these three indictments. Mr. Justice Yates concurred. Therefore he was for quashing. Mr. Justice Aston likewise concurred. Lord Mansfield. . . Let the three indictments be quashed; and the rule be discharged, as to the other. See S.P. determined accordingly, post p. 1706. *Rex v.*

Atkins, the very next day after this; and *Rex v. Gillet*, on the same day; and *pa. Rex v. Bake* and fifteen others, on the last day of this term, 26th June 1765.

[152] *Rex versus Bake* and fifteen others.

Mr. Dunning shewed cause why an indictment should not be quashed. He called it an indictment for a forcible entry; and argued that "an indictment for a forcible entry may be maintained at common law." He cited a case in *Trin.* 1753, 26, 27 G. 2. B. R. *Rex v. Brown* and others; and *Rex v. Bathurst*, *Tr.* 1755, 28, G. 1. S.P.

But, N.B. This indictment at present in question was only for (*Vi et Armis*) breaking and entering a close (not a dwelling-house); and unlawfully and unjustly expelling the prosecutors, and keeping them out of possession. Mr. Popham, on behalf of the defendants, objected "that this was an indictment for a mere trespass, for a civil injury; not a public, but a private one; a mere entry into his close, and keeping him out of it. The "force and arms" is applied only to the entry; not to the expelling or keeping out of possession: they are only charged to be unlawfully and unjustly. This is no other force than the law implies. No actual breach of the peace is stated; or any riot; or unlawful assembly. And he cited the cases of *Rex v. Gask*; and *Rex v. Hide*; and *Rex v. Hide* and another; (which, together with a note upon them, may be seen in the text and margin of page 1768.)

*Rex v. Bathurst* is the only case where the objection has not been holden fatal: and that was, because it was a forcible entry into a dwelling-house.

*Rex v. Jopson et al.* *Tr.* 24, 25 G. 2. B. R. was an unlawful assembly of a great number of people. (*V. ante, pa. 1702* in the margin.) Mr. Justice Wilmot. . .

No doubt, an indictment will lie at common law, for a forcible entry; though they are generally brought on the acts of parliament. On the acts of parliament, it is necessary to state the nature of the estate; because there must be restitution: but they may be brought at common law. Here, the words "force and arms" are not applied to the whole: but if they were applied to the whole, yet it [153] ought to be such an actual force as implies a breach of the peace, and makes an indictable offence. And this I take to be the rule, "That it ought to appear upon the face of the indictment to be an indictable offence." Here indeed are 16 defendants. But the number of the defendants makes no difference, in itself: no riot, or unlawful assembly, or any thing of that kind is charged. It ought to amount to an actual breach of the peace indictable, in order to support an indictment. For, otherwise, it is only a matter of civil complaint. And this ought to appear upon the face of the indictment.

Mr. Justice Yates concurred. Here is no force or violence shewn upon the face of the indictment, to make it appear to be an actual force indictable: nor is any riot charged; or any unlawful assembly. Therefore the mere number makes no difference.

Mr. Justice Aston concurred. The true rule is "that it ought to appear upon the face of the indictment to be an indictable offence."

Per Cur. unanimously.

Rule Made Absolute, to quash this indictment. So that this point seems now to be fully settled.

#### APPENDIX C

1 Tuck, Black. p. 108-109—"Such colonists carry with them only so much of the English law, as is ap-

plicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries. . . The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue, (such especially as are enforced by penalties) the mode of maintenance for the established clergy, the jurisdiction of the spiritual court, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times, and under what restrictions, must, [154] on case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and controul of the king in council: the whole of their constitution being also liable to be new-modelled and reformed by the general superintending power of the legislature in the mother country."

Tuck. Black. Ap. p. 405-406 – And here we may premise, that by the rejection of the sovereignty of the crown of England, not only all the laws of that country by which the dependence of the colonies was secured, but the whole *lex prerogativa* (or *Jura Coronae* before mentioned) so far as respected the person of the sovereign and his prerogatives as an individual, was utterly abolished: and, that so far as respected the kingly office, and government, it was either modified, abridged, or annulled, according to the several constitutions and laws of the states, respectively: consequently, that every rule of the common law, and every statute of England, founded on the nature of regal government, in derogation of the natural and unalienable rights of mankind; or, inconsistent with the nature and principles of democratic governments, were absolutely abrogated, re-

pealed, and annulled, by the establishment of such a form of government in the states, respectively. This is a natural and necessary consequence of the revolution, and the correspondent changes in the nature of the governments unless we could suppose that the laws of England, like those of the Almighty Ruler of the universe, carry with them an intrinsic moral obligation upon all mankind. A supposition too gross and absurd to require refutation.

In like manner, all other parts of the common law and statutes of England, which, from their inapplicability, had not been brought into use and practice during the existence of the colonial governments, must, from the period of their dissolution, be regarded not only as obsolete, but as incapable of revival, except by constitutional, or legislative authority. For they no longer possessed even a potential existence, (as being the laws of the British nation, and as such, extending, in the theoretical strictness, to the remotest part of the empire,) because [155] the connection, upon which this theoretical conclusion might have been founded, was entirely at an end: and having never obtained any authority from usage, and custom, they were destitute of every foundation upon which any supposed obligation could be built. . . . This is a regular consequence of that undisputed right which every free state possesses, of being governed by its own laws. . . . And as all laws are either written; or acquire their force and obligation by long usage and custom, which imply a tacit consent; it follows, that where these evidences are wanting, there can be no obligation in any supposed law.

## APPENDIX D

Shaw's *Jus.* p. 226. If any butchers, brewers, bakers, poulterers, cooks, coster-monger or fruiterers, shall conspire, covenant, promise, or make any oath, that they shall not sell their victuals, but at certain prices, or if any artificer, workmen, or labourers, do conspire, covenant, or promise together, or make, any oaths, that they shall not make or do their work, but at a certain price or rate; or shall not enterprise, or take upon them to finish what another hath begun, or shall do but a certain work in a day, or shall not work but at certain houses and times; every such person so conspiring &c. shall forfeit for the first offence £10 and if he pay not the same, within six days, shall suffer twenty days imprisonment and for the second offence shall forfeit £20 &c. and for the third £40 and if any such conspiracy covenant or promise to be made by any society, brother-hood, or company, of any craft, mystery or occupation of the victuallers above mentioned, with the presence or consent of the more-part of them, that then immediately upon such act of conspiracy &c. over and besides the particular punishment before appointed, their corporation shall be dissolved; and that the said offences shall be determined at the assizes of the peace, or court-leet.

By 25, Hen. 8, c. 2. it is enacted "that to remedy the frequent rise of the price of cheese, butter, capons, hens, chickens, and other necessary victuals for man's sustenance by ingrossing and regrating the same; the Lord Chancellor and other high officers of the state &c. [156] may upon complaint of any enhancing of the prices of such victuals without ground or reasonable cause, in any part of the king's dominions, set and tax reasonable prices of such victuals.

## APPENDIX E

Burns *Jus.* p. 164-5. The justice of every shire, riding and liberty, or the more part of them being then resiant within the same, and the sheriff, if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace, within the limits of the said city or town corporate, and of the said corporation, shall yearly in Easter sessions, or within six weeks next after, assemble, and call unto them such discreet and grave persons as they shall think meet, and having respect to the plenty or scarcity of the time, and other circumstances, shall have authority to limit, rate and appoint the wages as well of such the said articles, handicraftsmen, husbandry, or any other labourer, servant, or workman whose wages in times past have been by any law or statute rated and appointed, as also the wages of all other labourers, artificers, workmen, apprentices of husbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited or appointed by the year, or by the day, week, month, or otherwise with meat and drink, or without meat and drink, and what wages every workman, or labourer shall take by the great, for mowing, reaping, or threshing of corn, and grain, or for mowing or making of hay, or for ditching, paving, railing or hedging, by the rod, perch, lugg, yard, pole, rope or foot and for any other kind of reasonable labour or service. 5 El. c. 4, § 15.

And by the 1 J. c. 6 the justices or the more part of them, resiant in any riding, liberty or division where the sessions are severally kept, shall have power to rate

the wages within such division, as if the same were done in the general sessions for the county. § 5.

And by the said statute of 1. J. c. 6 the said act of 5 El. shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen, or workwomen, whatsoever [157] either working by the day, week, month, year, or taking any work by the great or otherwise. § 3.

If any person upon the proclamation published shall directly or indirectly, retain or keep any servant, workman, or labourer, or shall give any more, or greater wages, or other commodity, than shall be so appointed in the said proclamation; he shall on conviction before any of the justices, or other head officers above mentioned, be imprisoned for ten days, without bail, and shall forfeit £5 half to the king, and half to him that shall sue before the said justices in their sessions. 4 El. c. 4, § 18.

But yet masters may reward a well deserving servant, over and above his wages, according as he shall deserve, so it be not by way of promise or agreement, upon his retainer. Dolt. c. 58.

And every person that shall be so retained, and take wages contrary to the said statute of the 5 El. or to the said proclamation, and shall be thereof convicted before the justices aforesaid, or any two of these or before the mayor or other head officers aforesaid, shall be imprisoned for twenty one days, without bail. 5 El. c. 4, § 19.

And every retainer, promise, gift, or payment of wages or other thing contrary to the said act, and every writing and bond to be made for that purpose, shall be void. § 20.

## APPENDIX F

4 Christ. Black. p. 137. In note. Every confederacy to injure individuals, or to do acts which are unlawful, or prejudicial to the community, is a conspiracy, journeymen who refuse to work, in consequence of a combination, till their wages are raised, may be indicted for a conspiracy. 1 Leach Hawk. 348. One person alone cannot be guilty of a conspiracy; but one person may be prosecuted for having conspired with others, and may be tried and convicted alone. 1 Str. 193. In a prosecution for a conspiracy, the actual fact of conspiring need not be proved, but it may be inferred from circumstances, and the concurring conduct of the defendants, 1 Bl. Rep. 392. A conspiracy has been said to be comprehended under the denomination of [158] *crimen falsi*, and a person convicted of it is held to be rendered an incompetent witness. Leach. 349. But will this principle apply to confederacies, the designs of which are not to injure by fraud or falsehood, but by open violence?

Leach's *Crown Cases*, p. 382 – Priddle's Case – William Priddle, Robert Holloway, and Stephen Stephens, were convicted at the Old Bailey, in April Session 1787 of conspiracy; and sentenced to pay a fine of 6s. 8d. each, and to be imprisoned in his majesty's jail of Newgate, viz. William Priddle, for the term of two years, and Robert Holloway and Stephen Stephens for the term of eighteen months.

During the course of their confinement, George Crossley, against whom they had been convicted of conspiring, was indicted at Hick's Hall for wilful and corrupt perjury; and the indictment being removed into the Court of King's Bench, came on to be tried

before Mr. Justice Buller, at the sittings at Westminster after Trinity term 1787.

At the trial, William Priddle was produced as a witness on the part of the prosecution; and being examined on the *voir dire*, he acknowledged that he had been convicted of the conspiracy above-mentioned, and was then brought up under a *Habeas Corpus* from his confinement for that offence.

The defendant's counsel objected to his being examined, and submitted to the court, that a conviction of conspiracy rendered the party infamous, and destroyed his competency as a witness.

Mr. Justice Buller. Conspiracy is a crime of a blacker dye than barratry, and the testimony of a person convicted of barratry has been rejected. It is now settled, that it is the infamy of the crime which destroys the competency, and not the nature or mode of punishment. A conviction therefore of any offence which is comprehended under the denomination of *crimen falsi*, destroys the competency of the person convicted, as perjury, forgery by the common law, &c. The testimony of the witness was rejected.

#### [159] APPENDIX G

Case of Macklin the player, 2 M'Nally, 634. So if several persons meet at a particular place, from different motives, and being met, all act together to one common end, such acting together makes all the parties conspirators.

As in the king (at the prosecution of Charles Macklin) *v.* Lee, and others, B. R. England, 1774. Macklin was an eminent player, and several attempts were made to drive him from the stage. The court of King's bench granted an information against the

defendants for conspiring to ruin him in his profession, &c. *Vide* the inform. Doug. Cr. Cir. Assist. 160.

On the trial, the defendants counsel insisted, that the prosecutor, in support of a conspiracy, should give evidence to shew, that there was a previous meeting of the parties accused, for the purpose of confederating to carry their purpose into execution. Lord Mansfield over-ruled the objection. Conspiracy, he said, was derived from the verb *conspiro*, a breathing together; and therefore if a number of persons met together for different purposes, and afterwards joined to execute one common purpose, to the injury of the person, property, profession, or character of a third person, that was conspiracy, and it was not necessary to prove any previous consult or plan among the defendants against the party intended to be injured.—*Ms.*

## II. BALTIMORE CORDWAINERS – 1809 MARYLAND *V.* POWLEY

Abstract by the Editors.

The "Journeyman Cordwainers Society of Baltimore" ordered a general strike, January 17, 1809, and at the July term of the criminal division of the Baltimore County Court thirty-nine members were indicted and one of them was found guilty by the jury on the matter of fact. After a trial of fourteen days the judge, to whom was left the question of law, took the case "under advisement," and, so far as the records show, never imposed a sentence. No record of the full copy of the indictment, of the pleadings, or of the testimony has been preserved for any case in this court prior to 1872. The docket kept at the court-house begins 1807 and is complete for the period 1807-1811 covered by this case.

The counts in the indictment included the charge of compelling an employer, Sloan, to discharge certain employees and to prevent the same employees from obtaining employment.

In addition to the foregoing items, furnished after investigation at our request by Mr. T. W. Glocker of Johns Hopkins University, the following extract from the trial of the Journeyman Cordwainers of New York, page 379 refers to the same case: "Mr. S. also cited a certified opinion of Judge Scott of Maryland, in MS. where two cases were adjudged, one where after conviction a new trial was refused, and another, when on demurrer to evidence judgment was for the defendant –

upon this distinction, that where the party said to be injured went voluntarily into the society, there was no injury done him, however it might be if he was compelled." No copy of the certified opinion of Judge Scott referred to has been found.

### III. NEW YORK CORDWAINERS – 1809 PEOPLE V. MELVIN

Reported by William Sampson, Counsel for the Defense.

[Title page] TRIAL OF THE JOURNEYMEN CORDWAINERS OF THE CITY OF NEW YORK FOR A CONSPIRACY TO RAISE THEIR WAGES with the Arguments of Counsel at Full Length, on a Motion to Quash the Indictment, the Verdict of the Jury, and the Sentence of the Court. Reported by William Sampson, Esq., one of the Counsel in the Cause. New York: Printed and Published by I. Riley. 1810.

ADVERTISEMENT. The publisher has been induced to procure a copy of this interesting trial, and offer it to the American public, as at once a useful, amusing and interesting work. It is highly important to all Artizans and Mechanics, as well employers as workmen; and it is hoped that it may be thought well worthy the perusal of the gentlemen of the bar. But neither in point of instruction or amusement, is it foreign to any class of readers, as it will be found to contain much legal history, with the attractions of novelty, fancy and humour.

[1] CASE OF THE JOURNEYMEN CORDWAINERS OF  
THE CITY OF NEW-YORK

The bill was found at the court of general sessions of the peace, holden in and for the city and county of New-York, at the city-hall of the said city, in the month of December, in the year of our Lord one thousand eight hundred and nine, and filed on the 12th day of December, 1809.

*Present*, The Hon. De Witt Clinton, *mayor* of the city of New-York; Peter A. Mesier, Esq.; Thomas Carpenter, Esq.; *justices of the sessions*.

The indictment being of great length, the following abstract, which includes all the substantial parts of it, is judged sufficient for the understanding of the argument.

[2] THE PEOPLE OF THE STATE OF NEW-YORK against James Melvin, William Abernathy, Thomas Baker, Henry Vane, James Glass, Daniel Allen, John Gibson, Samuel Browning, Henry Bogert, Robert Baird, John Newland, William Cosack, Robert Lambert, Terence Murray, Patrick M'Laughlin, James M'Ninch, Wright M'Farland, William Beach, James Read, John Daly, George Read, John Morehouse, John Gillen, and Nehemiah Bradford.

The first count states, that the defendants, being workmen and journeymen in the art, mystery, and manual occupation of cordwainers, on the 18th October, 1809, &c. unlawfully, perniciously and deceitfully designing and intending to form and unite themselves into an unlawful club and combination, and to make and ordain unlawful by-laws, rules and orders among themselves, and thereby to govern themselves and other workmen in the said art, and unlawfully and unjustly to extort great sums of money by means thereof, on the day and year aforesaid, with force and arms, at, &c.

together with divers other workmen and journeymen in the same art, &c. (whose names to the jurors are yet unknown,) did unlawfully assemble and meet together, and being so, &c. did then and there, unjustly and corruptly conspire, combine, confederate and agree together, that none of them, the said conspirators, after the said 18th October, would work for any master or person, whatsoever, in the said art, mystery and occupation, who should employ any workman or journeyman, or other person in the said art, not being a member of the [3] said club or combination, after notice given, &c. to discharge such workman, &c. from the employ of such master, &c. to the great damage and oppression not only of their said masters, employing them in said art, &c. but also of divers other workmen and journeymen in the said art, mystery and occupation, to the evil example, &c. and against the peace, &c.

2d Count has the same general averments, and states that the defendants, designing and intending to form and unite themselves into an unlawful club and combination, and to make and ordain unlawful and arbitrary by-laws, rules and orders among themselves, and thereby to govern themselves in, (as in the first count,) and unlawfully and unjustly to exact and extort great sums of money by means thereof, &c. did unlawfully assemble and meet together, and being so met together, &c. did then and there, unjustly, &c. conspire, combine, confederate and agree, that none of the said conspirators, after the said day, &c. would work for any master or person whatsoever, in the said art, &c. who shall employ any workman, &c. who shall, thereafter, infringe or break any or either of the said unlawful rules, orders or by-laws. Concluding as above.

3d Count. That the defendants conspired, &c. not to work for any master or person who should employ

any workman, &c. who should break any of their by-laws, unless such workman, &c. should pay to the club such sum as should be agreed on, as a penalty for the breach of such unlawful rules, orders or by-laws, and that they did, in pursuance of the said conspiracy, refuse to work and labour for James Corwin and Charles Aimes, because they, C. and A. did employ one Edward Whittess, a cordwainer, (alleging that the said E. W. had broken one of [4] such rules and orders, and refused to pay 2 dollars, &c. as a penalty for breaking such rules and orders,) and continued in refusing to work, &c. for C. and A. until the said C. and A. discharged the said E. W. &c. &c.

4th Count. That they (the defendants) wickedly, and intending unjustly, unlawfully, and by indirect means, to impoverish the said Edward Whittess, and hinder him from following his trade, did confederate, conspire, &c. by wrongful and indirect means, to impoverish the said E. W. and to deprive and hinder him from following his said art, &c. and that they, according to the said unlawful, &c. conspiracy, &c. indirectly, unlawfully, &c. did prevent, &c. the said E. W. from following his said art, &c. and did greatly impoverish him.

5th Count. That the defendants did conspire and agree, by indirect means, to prejudice and impoverish the said E. W. and prevent him from exercising his trade.

6th Count. That the defendants, not being content to work at the usual rates and prices for which they and other workmen and journeymen were wont and accustomed to work, but falsely and fraudulently conspiring, unjustly and oppressively to augment the wages of themselves and the other workmen, &c. and unjustly to exact and extort great sums of money for

their labour and hire in the said art, mystery, &c. and did meet, &c. and being so met, &c. did unjustly and corruptly conspire, &c. that none of them should, after the said 18th October, work at any lower rate than \$3.75 for making every pair of back-strap boots, \$2.00 Suwarrow laced boots, full clammed, \$1.75 for laced boots in front, \$2.37½ for footing back-strap boots, \$3.25 for footing Suwarrows, \$1.25 for bottoming old boots,

[5] On account of any master or employer, to the great damage not only of their said masters, &c. but of divers other citizens, &c.

7th Count. That the defendants falsely and fraudulently conspired, &c. unjustly and oppressively to increase and augment the wages of themselves and other workmen, &c. and unjustly to exact and extort great sums for their labour and hire, &c. from their masters who employ them, did assemble, and being so assembled, did conspire, &c. that they, and each of them, &c. would endeavour to prevent, by threats, and other unlawful means, other artificers, &c. in the said art, &c. from working, &c. at any lower rate than, &c. (setting out the prices in the preceding count, and concluding likewise.)

8th Count states the design to form themselves into a club, as in the three first counts, and to assemble unlawfully, and that they did assemble, and being so assembled, conspired and agreed, that none of them should work for any master who should have more than two apprentices, to learn the said art, at one and the same time.

9th Count charges a conspiracy, by indirect means to prejudice and impoverish the following persons, who are all master shoemakers, and prosecutors of the indictment: Israel Haviland, John Mills, Timothy

Wood, John Peshine, Oliver H. Taylor, William Trowd, Isaac Minard, Samuel Mabbatt, Thomas Lewis, James Corwin, John I. Vanderpool, Christian Covenhoven, William Kidney, Thomas Benton, David Law, jun., Abraham Merril, Charles Lee, Thomas M'Kinley, James Jarvis, Charles Aimes, William Benton, and Peter R. Spranger.

[6] Saturday, December 16. The defendants, being in court, pursuant to their recognisances, were called upon to plead. Sampson, on their behalf, asked leave to peruse the bill, which was granted. After a short consultation with Colden, also of counsel for the defendants, he gave intimation that they should move the court to quash the indictment. The day being far advanced, Monday morning was appointed for the hearing of the motion.

Monday, December 18. This day SAMPSON opened the motion, as follows:—

May it please this honourable court. The indictment we now move to have quashed contains nine distinct counts, each affecting to charge the defendants with a substantive crime of conspiracy; yet we maintain, that, taken in the entire, it contains nothing to which we should be put to answer, either in law or fact. And we appeal to the discretionary power of the court, to save us from the hardship of pleading or demurring to facts, which, though proved, or admitted, could produce no legal result.

We understand, from the counsel for the prosecution, that they mean to support the indictment, without reference to any statute, but abstractedly upon the principles of the common law. On the other hand our positions are these: That by the common law, in

England, such combinations were never held to be conspiracies. That even though they had been, they never were so in this country, either by statute or common law. [7] That in England such indictments lie only in virtue of the statutes regulating the wages and labour of the workmen, called Statutes of Labourers. That such statutes were never in force in the United States of America, not when they were colonies, and certainly not since. That the crime of conspiracy is defined by a statute declaratory of the common law, as well in this state as in England, and that under that definition, no such indictment as the present can be maintained. That negative usage, from the first settlement of this country to the present time, is sufficient evidence to show, that the law never authorised such a proceeding. The definition alluded to is entitled "A Definition of Conspirators,"<sup>53</sup> and takes in the three kindred offences of conspiracy, champerty, and maintenance, which make a common title in all the ancient books, all partaking of the same nature, and punished as *crimina falsi*, with the villanous judgment. The English statute is in these words: "Who be conspirators and who be champertors:<sup>54</sup> Conspirators be they who do confederate, or bind themselves, by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to indite, (2) or falsely to maintain pleas; (3) and such as cause children within age to appeal men of felony, whereby they are imprisoned, or sore grieved; (4) and such as retain men in the country, with liveries or fees, for to maintain their malicious enterprises; and this extendeth as well to the takers as the givers. (5) And stewards and bailiffs of great lords, which, by their seigniory, office,[8]

<sup>53</sup> 33 Edw. I. *stat. 2. an. dom.* 1304.

<sup>54</sup> *Vid.* Keble, *stat.* p. 69.

or power, undertake to hear or maintain quarrels, pleas or debates, that concern other parties than such as touch the estates of their lords, or themselves. (6) This final ordinance and definition of conspiracy, was made and accorded by the king and his council, in his parliament, the 33d year of his reign. (7) And it was further ordained, that justices assigned to the hearing and determining of felonies and trespass, should have transcript thereof. (8) Champertors be they that move pleas and suits, or cause to be moved, either by their own procurement, or by others, and sue them at their proper costs, for to have part of the land at variance, or part of the gains."

It appears from the 7th section, that this definition applied as well to criminal prosecutions as to civil. It was, therefore, the universal definition of conspirators and conspiracy.

Immediately after follows the statute of champerty, restraining pleaders, attorneys, bailiffs of great men, &c. from corrupt bargains and oppressive acts, of which the fourth section is in these words: "(4) Our lord the king, at the information of Gilbert Rowberry, clerk of the council, hath commanded, that whoever will complain himself of conspirators, inventors and maintainers of false quarrels, and partakers thereof, and brokers of debates, that Gilbert Thornton shall cause them to be attached by his writ; and that they be before our sovereign lord the king, to answer unto the plaintiffs by this writ following: *Rex vie salutem*, &c.

From this it appears how far those have straggled from the common law principles, who have supposed, that a combination of men, to regulate their immediate and proper interests, was included in that odious accusation by the common law.

[9] The earlier statutes made *in pari materia*, ante-

cedent to this final definition of what should and should not be conspiracy, all warrant the same principle, and all turn upon falsehood, oppression by false charges, or corruptly meddling with concerns not their own: for instance: "None shall commit champerty for to have the thing in question."<sup>55</sup> This title is sufficiently explanatory.

"Penalty for buying the title of lands depending in suit."<sup>56</sup> This was to prevent the chancellor, treasurer, justices, great lords of the king's council, and such as had power, from taking churches, advowsons of church lands, and other bribes, for the corrupt abuse of their power, and perversion of law and justice.

"The remedy against conspirators, false informers, and embracers of juries."<sup>57</sup> This empowered justices of assises to take inquest without writ, and do justice without delay, upon conspirators, false informers, and evil procurers, of dozens, assizes, inquests, and juries.

And next is that final definition, already cited, of which Lord Coke speaks in these terms. "This, which was in truth the 21 Edw. III. is entitled a definition of conspiracy, and is in affirmance of the common law."<sup>58</sup>

The counsel opposed to us are able counsel, and can do much; but to bring the case of the journeymen cordwainers [10] of New-York within this definition of conspiracy, upon the principles of the common law, I think is more than they can do.

But what will they say when I read to them a similar definition by a statute of our own, made with a full view of all the English cases and statutes from the time of Edward I. and before it, where our legislators, after weighing them all, thought the best thing they could do

<sup>55</sup> 3. Edw. I. c. 35.

<sup>56</sup> 13 Edw. I. C. 49.

<sup>57</sup> 22 Edw. I. c. 11.

<sup>58</sup> 2 *Inst.* 562.

was to go back to the old common law definition, and re-enact it; and thereby get rid at once of all the bad precedents with which the English books abound.<sup>59</sup>

The declaratory statute of New-York is, as close as circumstances would permit, a transcript of the English final definition, "*Reddendo singula singulis*:" it is the same law. It only omits what respects great lords, and their men in livery, and such other mischiefs as were supposed for ever banished from this land. I leave this statute open for the perusal of the gentlemen, with this one remark, that, when all the English statutes were repealed in mass, this protecting law was adopted and enacted.

It is scarcely more necessary to say, that a definition of what shall be conspiracy is a declaration of what shall not be so, than that the line of circumference shows as well what is contained within a circle as what falls without it. The acts here charged fall without, and not within, the definition.

We have, therefore, for our maxim, that, *ubi nulla lex, ibi nulla transgressio*. We have also for us a definition, from high authority, of crimes and misdemeanors. [11] "A crime or misdemeanor," says Sir William Blackstone, "is an act committed, or omitted, in violation of some public law, either forbidding or commanding it."<sup>60</sup> Let me then ask, where is the public law that prohibits any thing, or commands any thing, which these defendants are charged with having committed or omitted? The silence of our statutes, the silence of our records, shows that there is none; and the definition in affirmance of the common law, shows that there could be none; and that even in England, there never was any other than those statutes of labourers,

<sup>59</sup> *Laws N.Y. v. 1. p. 343 sess. 24 c. 87.*

<sup>60</sup> 4 *Com. 5.*

which it is not pretended ever were of force in this country, and which are all repealed if they ever had been in force here.

Yet from the frequent recurrence of those statutes in the English law books, and of the cases growing out of them, has all the fallacy arisen. By too great familiarity with foreign law books, and too little attention to our own constitution and laws, we are often led into error, not considering how unsuitable these foreign laws may be to our condition. For instance: the English code and constitution are built upon the inequality of condition in the inhabitants. Here all are in one degree, that of citizens; and all equal in their rights. There are many laws in England which can only be executed upon those not favoured by fortune with certain privileges; some operating entirely against the poor. There one man is sovereign, and all others his subjects. Here no man is subject, and no man lord or master. Why should we, then, take lessons of prosperity or felicity from other countries. If they do not take them from us, let us at least remain contented with our own institutions, [12] and wean our affections from such as are of no kin nor profit to us.

But how strangely are men the creatures of education and habit. At the same time that we have shaken off the supremacy of the English law, we imbibe its errors with our mother's milk. And the remarks of the profound and perspicacious Adam Smith, are realized here as in Great Britain. There, he observes, the master tradesmen are in permanent conspiracy against the workmen; so much so, that it passes unobserved as the natural course of things, which challenges no attention. Even so we see it here. These masters enter without fear into a sordid combination to oppress the journeymen; and if the workmen meet in opposition to them,

they forthwith sound the alarm, and spread the cry of treason and conspiracy.

The difference, however, is that in England there are statutes to warrant such prosecutions. Here there never were any such. There, there are precedents: here, there are none. But those precedents in England are not founded on the common law, but by statute, and in counteraction of it: and the proof is, that not one such case is to be found in any book of reports, treatise, abridgment or tables, till the passing of the statutes of labourers, which gave rise to them; and the first of which was in the reign of Edw. III. And I call upon my adversary, that great legal antiquarian, my learned countryman, who lives amongst the old fathers of the law, who estranges himself from his friends, his wife, and lawfully begotten children, to haunt with such musty companions. I call upon him who spends his mornings with Sir George Croke, and Sir Harbottle Grimstone, and his evenings with the *Mirror of Justice*, and *Javaise of Tilbury*, to [13] tell me of any case of this nature prior to those statutes. If he cannot show when it was attempted, then it never was attempted. I challenge him now to do it, and I put the issue of this motion on the chance.

And what were those statutes out of which these prosecutions grew? They were the lineal descendants, the lawful and immediate issue, of pestilence and public calamity, and they do not hide their origin; for by them, and their consequences, the most useful class in England is rendered the most miserable, and grows poor as its oppressors grow rich. Throughout the habitable world, luxury, vanity, and even fancy, is satiated by the productions of their industry; but, like the worm that spins its bowels, and perishes in the act, so they

whose hands impart to the tissue its lustre and its hue, to flatter the voluptuous and the gay, pine themselves and decay in obscurity and want. And a late tourist has too justly remarked, that, from poverty and pain, the workmen in certain manufacturing towns in England, exhibit the strange phenomena of green hair and red eyes!<sup>61</sup>

It is these statutes, and the prosecutions grounded on them, that drive the artizan to emigrate as often as he can escape from the laws which make his country his prison, and has intelligence enough to know that there is a better. It is owing to that system, that, in a nation expending thirteen millions sterling yearly upon instruments for the destruction of men, one million out of nine are beggars receiving alms! ! ! And are these the benefits the prosecutors are now, for the first time, about to visit upon our happy community?

Mr. Reeves in his valuable history of the English law, thus introduces these statutes:

[14] "The next parliamentary regulation relating to the clergy, was statute 36 Edw. III. stat. 11. c. 28. which was occasioned by the late plague that had depopulated the church as well as the laity. The priests having from thence taken occasion to make high demands for their services, certain limits were fixed by statute for the attendance of parish and other priests."<sup>62</sup>

He then passes from the priests to the labourers, who, it seems, were no better after the plague than the priests. "This public calamity having thinned the lower classes of the people, servants and labourers took occasion to demand very extravagant wages. An ordinance was therefore made by the king and council, to whom it was thought properly to belong, as an article of police and internal regulation, especially as the parliament were

<sup>61</sup> Espriella's *Letters*.

<sup>62</sup> Reeves's *Hist. Eng. Law*, v. 2, p. 387.

prevented from sitting by the violence of the plague. This ordinance was afterwards made an act of parliament, and constitutes the statute 23 Edw. III. Mr. Reeves then concludes with this remark: "The contents of this statute are worthy of notice, as they are the first provisions of the sort, and the foundation of the system to which the community were subject for many years after."

Thus, whether we judge of these statutes by their origin or their effects, they may be useful lessons to warn us from the adoption of similar wickedness and folly. The sequel will show how one false principle generates a multitude of others. "Because it was found," adds the author, "that people would not sue for the forfeiture against servants and workmen taking more than the above-mentioned wages, it was afterwards ordained, [15] that such forfeiture should be assessed by the king's officers."<sup>63</sup> The moral then is this: the laws were oppressive: the people revolted against them: and arbitrary courses were invented to enforce them!

"In the 25th year of the king, the commons complained, in parliament, that the above ordinance was not observed, wherefore a statute was made ordaining further regulations on the subject. It was enacted, that carters, ploughmen, and other servants, should be allowed to serve by the year, or by some other usual term; and not by the day. All workmen to bring their implements openly into town, and there be hired in a common place, and by no means in a secret one. Certain prices were fixed for a day's work of mowers, reapers, and others. Servants to be sworn twice a year, before the lords, bailiffs, stewards, and constables of every town. And those who refused to take such oaths, to per-

<sup>63</sup> Reeves's *Hist. Eng. Law*, v. 2, p. 390.

form the work they engaged for, were to be put in the stocks, by the above officers, for three days or more, or to be sent to the next gaol, there to remain till they would justify themselves."

"Artificers who absented themselves from their work were to be branded with a hot iron on the forehead, with the mark of the letter F. to denote the falsity they had been guilty of in breaking the oath by which they had bound themselves, according to the former statute to serve." <sup>64</sup>

Were the gentlemen aware of this history when they brought forward this prosecution? Would they introduce into this country, any part of a system, under which men were baited like wild beasts; their limbs put in the [16] stocks; their souls put to the torture, that they might be forced to swear against their interest and their conviction, on pain of branding, dungeoning, pilloring, ear-cutting, and nose-slitting. Much better did those lawgivers themselves deserve branding with the letter F. for making such laws. If perjury was committed, it was they who were guilty, and deserved to suffer for it, for, in such case,

"'Tis he who makes the oath that breaks it,  
Not he that from compulsion takes it."

Further: "A servant, labourer, or artificer, who had absented himself, might be demanded by the mayor or bailiffs of the place. If they refused to deliver him up, they might go before the justices of labourers. This was to prevent such fugitives from being harboured, and to interest all persons in the execution of this statute."

So here we find, that neither the secrecy of retreat, the charity of his fellow-creatures, nor the benignity of

<sup>64</sup> 34 Edw. III. c. 10.

the magistracy, was a refuge to the victim, against the cruelty of his pursuers.

"In the following reign," continues the author, "these statutes were confirmed with additions. The lower orders of people were, in consideration of law, servants, labourers, artificers, and beggars."<sup>68</sup> This classification is surely not American!

"It was now enacted, that no servant, either man or woman, should depart at the end of his service, out of the hundred, rape, or wapentake, where he dwelt, to serve or dwell elsewhere, unless he brought a letters patent, [17] containing the cause of his going or the time of his return, under the king's seal. Persons harbouring such wanderer, not having a letter, were to be fined by the justices if they harbour him more than one night."

"And, to prevent disorders, it was ordained, that no servant, labourer, or artificer, should carry a sword, except in time of war, or when travelling with his master; but they might have bows and arrows, and use them on Sundays and holidays. And they were required to leave all playing at tennis or foot-ball, or other games called quoits, dice, casting of the stone kails, and other such importune games. This is the first statute that prohibited any sort of games or diversions."

"In the time of Henry IV. it was complained, that notwithstanding the statute of Canterbury, ordaining that no person who worked in husbandry till twelve years of age should be permitted to be put to any mystery or handicraft, yet the children of many persons, having no land or rent, were bound apprentices to crafts, in towns and boroughs, for the pride of clothing, and other evil customs that servants do use within the same. To prevent which, none should put his son or

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<sup>68</sup> 34 Edw. III. v. 3, p. 169. 12. Rich. II. c. 3. called *stat. of Canterbury*.

daughter apprentice to any craft or labour within a city or borough, except he had land or rent to the value of twenty shillings per annum at least, but he should put them to other labour, as his estate required, on pain of one year's imprisonment. All labourers and artificers are annually to be sworn at the leet, to observe the statutes relating to their wages, and if they refused, to be put in the stocks three days. To facilitate this it was provided, that every town [18] or seignory, not having stocks, was to be fined a hundred shilling."<sup>66</sup>

Thus we find that towns had subsisted without stocks, as in this our own happy country, till these mischievous laws and persecutions rendered them essential, and made it penal to be without stocks. These statutes were continued in England, with additions and alterations, from time to time; but history shows how they were always abhorred, and consequently difficult of execution.

"In the time of Hen. VI. it appears that masons used to hold confederacies and meetings, to concert schemes for opposing the statutes of labourers. To prevent the effects of them it was enacted, that any one causing such chapters or congregations to be assembled, should be judged guilty of felony."<sup>67</sup>

Still, the more obnoxious those laws became to human feelings, the more difficult it was to execute them; and we find that in the reign of Elizabeth, if not more tender, more wise, than her predecessors, they were all repealed.

The repealing act is entitled, "An act containing divers orders for artificers, labourers, servants of husbandry, and apprentices."<sup>68</sup> After reciting that a great number of statutes stand in force presently on the sub-

<sup>66</sup> 12. Rich. II. c. 3. p. 223. 7 Hen. IV. c. 17.

<sup>67</sup> 3 Hen. VI. c. 1.

<sup>68</sup> 5 Eliz. c. 4.

ject, it proceeds: "yet partly for the imperfection that is found in sundry of the said laws, and for the variety and number of them, and chiefly for that the wages and allowances limited and rated in many of the said statutes, are in many places too [19] small, and not answerable to this present time, respecting the advancement of prices of all things belonging to the said servants and labourers, the said laws cannot without the great grief and burthen of the poor labourer and hired man, be put into good and due execution."

Yet had the execution of these laws been all along enforced "to the great grief and burthen of the poor labouring and hired man;" and the poor hired man was all along forced to swear to them, or else be put two nights and three days in the stocks, and the rest of his life-time in gaol; and whoever was moved by pity to harbour him, was declared a malefactor for his sake. Was this, or was it not, warring against humanity, against Christian charity, and the religion of an oath? By this statute, too, the justices were to fix the wages of workmen, and whoever gave more, as well as he who took more, than they fixed, was imprisoned; and those bred to arts were to be put in the stocks two days and one night if they refused to work at husbandry; and both men and women were compellable to work one-half of the year from five in the morning till eight in the evening, and the other half of the year from twilight to twilight, that is, as long as they could see. If we begin to adopt these stupid acts of oppression, we shall find it difficult to stop. There are others of the same family, so connected in kind, that they hang together like tape worms – you cannot take one but you must pull all with you.

There is one regulating what persons of every degree

should eat, on what particular saints' days they should have sauce to their meat, and of what their sauce should be made; and the reason given is, that "the English used more meat than any other people, which not only [20] hurt their souls, but left less for them to give the king when he had need of it."<sup>69</sup> There are others as fantastical, called statutes of apparel, prescribing, according to the condition of each man and woman, of what form and stuff their coats or petticoats should be. One enacts, that no hat shall be above twenty pence, nor cap above two pence.<sup>70</sup> Another, that wearing silk on hat or bonnet, gilt scabbards, hose, shoes, and spur leathers, shall be three months imprisonment and forfeiture, &c.<sup>71</sup> Another, that all persons above seven years old shall wear caps, or forfeit three shillings and four pence to the king, except maids, ladies, and gentlewomen of twenty marks lands, and lords, knights, &c.<sup>72</sup> Before we borrow from such a code, let us examine, from good evidence, what was the spirit of old times, and what progress human reason had made when the principles we are about to adopt first took their rise. I have now my finger on a statute which is precious in that view. It is unfortunately in that fearful jargon called law French, which modern men cannot pronounce for fear of dislocating their jaws. I would as soon crack so many butternuts as pronounce so many words of it. I shall, therefore, humbly beg leave of the court to read some passages in English.

[Counsel here read from 3 Edw. iv. c. 5; 22 Edw. iv. c. 1, regulating the apparel of subjects.]

If the gentlemen for the prosecution ask to what pur-

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<sup>69</sup> *Statutum de cibariis utendis*, 10 Edw. III.

<sup>70</sup> 4 Hen. VII. c. 9.

<sup>71</sup> 1 Phil. & Mary.

<sup>72</sup> 13 Eliz. c. 19.

pose I read such statutes, I will tell them. It is to moderate their enthusiasm for old English laws and ordinances, [24] and to render them better contented with the institutions and usages they have. Still if there were no worse laws than these masquerading regulations, distinguishing the community, like the Hindoo casts, we might laugh at their absurdity; but the laws against artisans in England are of a more cruel nature. The hardship, for instance, of making justices, who never laboured, the judges of the poor man's labour, its intensity and its remuneration, is not equitable. They are not, in that respect, treated as free agents; they are not judged by their peers. The qualifications of those English justices are no qualifications for arbitration of such kind. They may be "most sufficient knights and esquires, with freehold, copyhold, or customary estate;" they may be "of the peace and the quorum." They may be loyal men to church and state; but such will be too apt to scorn a leather apron. It is not with their back to the fire, and their belly to the table, that they can perceive the poor man's wants. When they have eat their capon, and swallowed their sack, with their reins well warmed, and then turn round to take their nap, with their backs to the table and their belly to the fire, they are not the better qualified to judge the poor man's case. Sir Guttle may calculate, that if the lean rascals were to feed well, they might wax as fat as gentlemen. And justice Drowsy might conclude, that, as there was but a time for all things, if the handicrafts got more time to sleep, there would not be enough left for gentle folks. If justice Testy has the gout, and his shoe should pinch, it would be reason for putting all the ragamuffins in the stocks. This may be exaggeration: Perhaps it is: but if there be any truth in it, let it go for what it is worth.

[25] There exists at this day a law in England,<sup>73</sup> that artificers in foreign countries, not returning within six months after warning given them by the British ambassador where they reside, shall be deemed aliens, and forfeit all their lands and goods, and be incapable of any legacy or gift. By it the industrious man, whose only crime is the possession of some useful art, and having transported himself to a country where, instead of groaning under taxes and tithes, he might enjoy the fruits of his labour, and the blessings of equal laws, is subject to be remanded, like a prison-breaker, by an ambassador, sent amongst us, possibly for the purpose of debauching our people, insulting our government, and planning our destruction. Other statutes<sup>74</sup> inflict fine, imprisonment, pillory, and ear-slitting, upon such as encourage any artisan to seek a better lot; and this they call "seducing artisans." . . .

[26] Shall we, then, second the intention of the oppressor? Shall we, by such prosecutions, drive from our hospitable shores those who increase our stock of industry, population, and revenue? Shall we too hunt the wanderers like frightened birds, that find no twig unlimed, no bough to light upon? Shall we, without law or precedent, and in the teeth of a non-usage, as old as the annals of our country, rake up the embers of the English common law to find a pretext for doing what never was done before, and never should be done? If we do this we must do more. We must also make statutes of labourers: for these persecutions will thin the artisans here as the great plague did formerly in Britain. Like birds of passage, no longer warmed by a genial sun, the instinct of their nature will warn them to depart. Unless restrained by bolts or penalties, they

<sup>73</sup> *Stat. 5 Geo. I. c. 27.*

<sup>74</sup> *5 Geo. I. c. 27. 23 Geo. II. c. 13. 14 Geo. III. c. 71.*

will flock together, even on the house tops, and take their flight no man knows where; not like the summer swallows for a season, and to return again; but like the vital breath, which, when it quits its earthly residence, leaves it for ever to decay and moulder, and returns no more.

The avarice of the Patricians drove the people of Rome to the *mons sacer*. Who is the people-hating Appius Claudius that would do so here? And if it be done, which of these sleek and pampered masters, will it be, Mr. Corwin, or Mr. Minard, that will take upon him the office of Agrippa, to cajole them with a parable, how he is all belly, and they all members; how his vocation is to eat and repose, theirs to work and starve.

Let not these allusions be thought foreign to the point. It is by taking larger views of things that we master the little fidgeting spirit of circumstance. Such considerations are antidotes to those occasional spasmodic affections [27] in the law, which it is important to cure in their incipency, lest they turn, as in Great Britain, to a chronic malady. This prosecution goes professedly upon principles of common law; and I have shown an ancient definition of the crime in affirmance of the common law, to which it is repugnant. I have shown the same statute re-enacted in this state coeval with its constitution. I have shown negative usage in England down to the passing of the statutes of labourers, and here as ancient as the history of America, and as uninterrupted as the blessings that have showered upon this land. I shall now show, that though the common law of England should warrant such a prosecution, it does not follow that it should prevail here. And to this end, it will be necessary to take a view of the principles which govern the adoption of the laws of a mother country into new settlements.

The substance of all the authorities in the English books, upon the head of transplanting the English law into new countries, is concisely stated in Peere Williams's *Reports*.<sup>75</sup> There the master of the rolls is reported to have said, that the lords of the council had determined, upon appeal to the king and council from the plantations – “1st. That if there be a new inhabited country found by English subjects, as the law is the birthright of every individual, so they carry their laws with them, and, therefore, such new found country is governed by the laws of England; though, after such country is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind [28] them; for which reason it has been determined, that the statutes of frauds and perjuries, requiring three witnesses to a devise of lands, does not bind Barbadoes.

“2dly. Where the king of England conquers a country it is a different consideration; for the conqueror, by saving the lives of the people conquered, gains a right and property in such people, in consequence of which he may impose upon them what he pleases.”

I shall not investigate the latter clause, nor inquire how far the Dutch inhabitants became the property of king Charles by reason of his “saving their lives.” How far such doctrines, in a limited monarchy, are constitutional; how far they are humane, in any circumstance, I leave to others. But, as the English settlers were encouraged by the promises of a domestic legislature and a constitution, they were not the property of the king, and they had still their birthright. Now a birthright means some indefeasible advantage, or it means nothing. Where it is said, that new settlers are entitled to the English laws as their birthright, it

<sup>75</sup> 2 P. Wms. p. 75.

cannot be intended that they should be encumbered with such laws of the mother state as would be noxious and oppressive, and utterly repugnant to the new condition.

The authority of Sir William Blackstone upon this head is strongly pronounced. He says, "these notions of the law of England being *ipso facto* in force in a new country, as the birthright of the settlers, must be understood with many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation, and the condition of an infant colony: such, for instance, as the general rules of inheritance and protection from personal injuries: the artificial refinements and distinctions incident [29] to the property of a great and commercial people: the laws of police and revenue, such, for instance, as are enforced by penalties: the mode of maintenance for the established clergy: the jurisdiction of the spiritual court; and a multitude of other provisions are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted, and what rejected; at what times, and under what restrictions must be decided in case of dispute, in the first instance, by their own provincial judicature, subject to the revision and control of the king and council."<sup>78</sup>

I shall adventure no further on this subject. It is enough for me that our judges are free to determine what parts of the common law shall be adopted, and what rejected. Formerly, the provincial legislatures of the colonies could do it, subject to the revision and control of the king of England and his council. Our independent judges will now decide without any such control. I shall, however, call to my aid a short passage

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<sup>78</sup> 1 *Com.* p. 107.

from a very useful domestic historian, in treating "of our laws and courts." "The state of our laws opens a door to much controversy. The uncertainty with respect to them renders property precarious, and greatly exposes us to the arbitrary decisions of bad judges."<sup>77</sup> Let it be remembered this was written when the judges were appointed by a foreign influence, and our benches not filled as they are now, by judges who possess the people's confidence.

"The common law of England is generally received together with such statutes as were enacted before we [30] had a legislature of our own. But our courts exercise a sovereign authority in determining what part of the common and statute law ought to be extended; for it must be admitted that the difference of circumstances necessarily requires us in some cases to reject the determination of both."

Judge Tucker, a writer worthy of his country, states, that all parts of the common law and statutes of England, which from their inapplicability had never been brought into practice, during the existence of the colonial governments, must, from the dissolution of those governments, be regarded not only as obsolete, but as incapable of revival, except by constitutional or legislative authority, having no longer even a potential existence, founded upon that theory of British laws, extending to the remotest extremity of the empire: for the connection once broken, he considers, that theory at an end; and, therefore, such as never had obtained authority from usage and custom, he holds destitute of every foundation upon which any supposed obligation could be built. This he considers the natural consequence of the revolution, and the correspondent

<sup>77</sup> Smith's *Hist. N.Y.* c. 6. p. 262.

changes in the government; unless, he emphatically adds, "we suppose that the laws of England, like those of the Almighty Ruler of the universe, carry with them an intrinsic obligation upon all mankind; a supposition too gross and absurd to require refutation."<sup>78</sup>

Several of the state constitutions, with the same intention as ours, have used a more definite expression, and instead of saying that such parts of the English laws as were theretofore in force, should continue to be so, till repealed, &c. they have used the term "practised on," [31] extinguishing, without more form, all such obsolete or incongruous parts as had not been found applicable to the necessities of their condition; such as during two or three centuries, or since their first origin as a colony, had never been called into activity. . . .

[33] . . . I have said that there was no American precedent for this indictment, unless it were imported from Great Britain in this present year, and I hold in my hand a minute report of a similar case in Philadelphia, where the law was fully and ably discussed at the bar, and where it appeared, *ex concessis*, that no such precedent existed in America. The only opinion as yet to sanction it is that of a single judge, Mr. Levy, the recorder of Philadelphia. Before that becomes precedent and law, I shall, without personal disrespect, canvass, with due freedom, the doctrines he lays down to the jury as law. . . .

[Here, pages 33-44, follows an examination of *Commonwealth v. Pullis* (1806). After pointing out the absurdities and inconsistencies of the common law and its inapplicability to conditions in America, he continues:]

[44] . . . The enemies of the common law, says

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<sup>78</sup> 1 Tuck. Black. App. p. 406.

the recorder of Philadelphia, when they attack the common law, single out some detached branch of it, and declare it absurd and unintelligible, without understanding it. If this be so, I think it is not the worst generalship; all enemies attack each other in the weakest part of their lines. I do not profess to attack the common law, though I have no superstitious reverence for it, and think there are other systems as good. But since it is the common law which is set on to trample down my clients, I have resolved to take the bull by the horns. It is said that no man who does not understand the whole of it is fit to judge of any part of it. If that be so, I think it will have its privilege of clergy, for there lives not a judge upon earth who is entitled to cognisance of it. Lord Coke, who inked more paper with it, and bestowed more time and study upon it, than perhaps any other, exclaims, that ever with increase of knowledge cometh increase of doubt. He also says, that in its fictions consist all its equity. He that is to judge of it then must not increase his learning, for that would increase his doubts, and render him as it were, a Doctor Dubitantium. And he must addict himself to fiction to comprehend its equity. When he has done this he will have the qualifications that belong to knave and fool.

[45] Let us examine it in its most essential parts, and what is it? What ever could have been the wisdom of that law which decided upon the life and death of man by blasphemous appeals to miracles; by fire and water ordeal; by the choak bread and the holy cross; and which decided upon property by venal champions; by thumps of sand bags, and the cry of craven? How does this accord with our principles and institutions, which do not admit of fighting cocks for money, much less men?

Why did our constitution repeal the English statutes, and declare that nothing of the common law, repugnant to that constitution, should remain, if antiquated barbarities were still to be revived and visited upon us; and if we are not to be allowed even to inquire whether they are attacks upon our rights or not? We should then be worse off than the English people are; for many of the old common law doctrines are abrogated by English statutes, but in which the colonies were never named, and with which the colonial legislators never meddled, not supposing them to have had force of law on this side the Atlantic. Our case would be singular on the earth. Our judges might then unlearn all they had studied of national or congenial institutions, to make themselves proficient in Mercian *lage* and Dane *lage*. They might study *more majorum* in hollow trees and caverns, till they forgot to read or write, and became Druids at common law.

When is it that we shall cease to invoke the spirits of departed fools? When is it, that in search of a rule for our conduct, we shall no longer be bandied from Coke to Croke, from Plowden to the Year Books, from thence to the dome books, from *ignotum* to *ignotius*, in the inverse ratio of philosophy and reason; still at the end of [46] every weary excursion, arriving at some barren source of grammatical pedantry and quibble.

How long shall this superstitious idolatry endure? When shall we be ashamed to gild and varnish this arbitrary gathering of riddles, paradoxes, and conundrums, with the titles of wisdom and divinity? When shall we strike from the feet of our young and panting eagle these sordid couplets that chain him to the earth, and let him soar, like the true bird of Jove, to the lofty and ethereal regions, where destiny and nature beckon him?

Those who framed the constitution under which we live did not abolish all the common law, and they did right, because in that, as in other systems, there is always something to approve, and use had sanctioned it. They did not pursue it through all its complex details, for that would have been endless and impossible: but they abolished all the English statutes, and by a general clause, abrogated all of the common law that should prove in contrariety with the constitution they established. In Philadelphia, the recorder says, you shall not even inquire whether the act in judgment is or is not an attack upon the rights of man. But the constitution of this state is founded on the equal rights of men, and whatever is an attack upon those rights is contrary to the constitution. Whether it is or is not an attack upon the rights of man, is, therefore, more fitting to be inquired into, than whether or not it is conformable to the usages of Picts, Romans, Britons, Danes, Jutes, Angles, Saxons, Normans, or other barbarians, who lived in the night of human intelligence.—Away with all such notions.

Shall all others, except only the industrious mechanic, be allowed to meet and plot; merchants to determine [47] their prices current, or settle the markets, politicians to electioneer, sportsmen for horseracing and games, ladies and gentlemen for balls, parties and bouquets; and yet these poor men be indicted for combining against starvation? I ask again, is this repugnant to the rights of man? If it be, is it not repugnant to our constitution? If it be repugnant to our constitution, is it law? And if it is not law, shall we be put to answer to it?

If it be said, they have wages enough, or too much already, I do not think any man a good witness to that point but one who has himself laboured. If either of

the gentlemen opposed to us will take his station in the garret or cellar of one of these industrious men, get a leather apron and a strap, a last, a lap-stone and a hammer, and peg and stitch from five in the morning till eight in the evening, and feed and educate his family with what he so earns, then if he will come into court, and say upon his corporal oath that he was, during that probation, too much pampered or indulged, I will consider whether these men may not be extortioners.

The principal authority relied on in Philadelphia, was a passage from Hawkins, and I am bound to say, that that authority was grossly mistaken. It was adduced to show that these men were indictable at common law. The passage is thus: "It seems certain that a man may not only be condemned to the pillory, but also be branded, for a false and malicious accusation; but since it doth not appear to have been solemnly resolved that such offender is indictable upon the statute, it seems to be more safe and advisable to ground an indictment of this kind upon the common law, since there can be no doubt that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law; as [48] where divers persons confederate together, by indirect means, to impoverish a third person; or falsely and maliciously to charge a third person with being the father of a bastard child, or to maintain one another, in any matter, whether it be true or false." <sup>79</sup>

Now the whole of this passage, when understood, shows the contrary of what it was cited for. The author ratifies the common law definition of conspiracy and maintenance, and justly observes, that all indictments for false and malicious conspiracies, (for of such only

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<sup>79</sup> 1 Hawk. P. C. c. 72. p. 191. Leach's edit.

he is then treating,) are more safely laid at common law, and that for such false and malicious accusations men may be branded. "False and malicious accusations of this nature are indictable," he adds, "rather at common law than under the statute; and it does not appear to have been ever solemnly decided, that such false and malicious accusations are indictable under the statute."

Was it not a perversion of this author's meaning to suppose that it applied to a confederacy of mechanics for the regulation of their own concerns? What has their case to do with the doctrine of false and malicious accusations? And as to what he says of divers persons confederating by indirect means to impoverish a third person, or falsely charge a third person with being father of a bastard child, or to maintain one another in any matter, whether true or false; has not this a manifest reference to the crimes of false conspiracy and maintenance, as already defined, and which being *crimina falsi*, subjected the party to be branded for the falsehood? What has all that to do with the wages of tradesmen?

[49] The notion that confederating to do any thing indirectly tending to impoverish a ~~third~~ person, is indictable at common law, is so puerile a mistake, that I feel distressed to be under the necessity of exposing it. Surely, if men were indicted for conspiring to build a steam boat, which would indirectly impoverish some third person, for instance, the master of a passage vessel, the absurdity would be very glaring; or if it was to set up any machinery that would be the means of under-selling others.

Hawkins's words must, therefore, be taken *secundum subjectam materiam*, and according to the context.

They will then be consonant to old authorities, and the law will be rescued from so absurd a position, as that all men who joined in any thing of which the effect might be the incidental diminution of the gains of a third person, should be therefore guilty of the crime of conspiracy, and be liable to branding.

A slight and a very slight acquaintance with law phraseology, or with the popular idiom of one or two centuries past, will suffice to clear away any difficulty which the term indirect may occasion, if taken in its present vulgar acceptation.

*Rectum*, in Latin, is synonymous with *Jus*, and means law or right; and was anciently used even for the accusation or trial.<sup>80</sup> A man who had reversed his outlawry, or who stood at the bar, and was unaccused, was said to be *rectus in curia*, or *rectum esse*. *Directum*, which has the same root, means the same thing, and has been corrupted by the French into the word *droict*, or *droit*, and in the English, by merely throwing away the Latin termination, [50] makes direct. The privative particle *in*, inverts the sense, and it become indirect, which, in the old law phrase, meant nothing but unlawful; as we find the word *droit* in all our law French books means law, and is the generic term for law in France at this day.

The word *droict*, which is equivalent to the English direct, is thus defined in our old law language: "*Droit est ou l'on ad chose qui fuit tolle d'auter per tort, le challenge ou le claim de lui qui doit avoir ceo, est terme droit.*"<sup>81</sup>

And the words direct and indirect, are to be found generally used in that sense by authors of no very great antiquity.

<sup>80</sup> *Bract. lib. 3.*

<sup>81</sup> *Termes de ley.*

Johnson defines the term indirect to mean, wrong, improper, not fair nor honest; and indirection he explains to be dishonest practice, but observes that it is not now in use.<sup>82</sup> . . .

Thus has the sense of this author been perverted; and as nothing multiplies like error, so has this mistake found its way into many book manufactories, but can always be traced back to this single source. And, although it may [51] have had some influence upon the decision of a few very modern cases, yet there is no adjudged case where any act has been held indictable as a conspiracy at common law, whereof the essence, or *corpus delicti*, has not been falsehood, oppression, or unlawful maintenance, in some sort or other; though, perhaps, not always as exactly as the law requires, falling under the definition by the statute Edw. I. and by our own statute. There are many execrable cases to be found in English books upon this very subject of conspiracy, as well in the star chamber as out of it. There, if the gentlemen look for precedents, they may find them, where the same wretch<sup>83</sup> has been alternately triumphant accuser and degraded culprit, eulogized and reprobated by the same judge,<sup>84</sup> execrated and honoured, whipped and caressed, pilloried and pensioned. Yet with all the strange and odious things to be found in English cases of conspiracy, there is no precedent of such an indictment as this, unless it be under some statute made expressly on the subject.

If Hawkins had thought workmen indictable for combining to regulate their wages, he would, with his usual precision, when treating so minutely on the sub-

<sup>82</sup> Johnson's *Dict. folio*.

<sup>83</sup> Titus Cates.

<sup>84</sup> Scroggs.

ject, have said so, and have given his authority for saying so. His silence on the subject is conclusive that he never even had such an idea, and that there was no such authority.

Another paragraph was cited, from what is called Leach's Hawkins, which paragraph Hawkins never wrote, nor could have written, viz. "that all confederacies are unlawful, though the object of them be lawful." The case from which this strange sentence is borrowed is that of the journeymen taylors of Cambridge, in the 7th year [52] of Geo. I. The death of queen Anne, and the accession of George, happened in 1714. The case must have been decided about 1721. Serjeant Hawkins's entire work, in two folio volumes, was published in 1716.<sup>85</sup> This passage is in the first volume. It is not to be found in the folio editions, but is interlarded in small type in the new editions, which, unfortunately, contain more of what Hawkins did not write than of what he did. If the venerable serjeant were to return upon this earth, I think he would look twice at some of those note-mongers, who had conspired with the booksellers falsely to charge him with being the father of such spurious offspring, and placarded the fair monument of his learning and industry with such obscenities. The book from which this queer doctrine has been extracted is, moreover, the worst book of English reports under which the shelf groans.<sup>86</sup> It is a book with two names, and equally condemned by either. Its character is to be found in Sir William Burrow's *Reports*, given not only by that judicious reporter, but also by Lord Mansfield, and his brethren. In one case he calls it "a miserable bad

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<sup>85</sup> 1 Hawk. P. C. c. 72. s. 2. n. 2. Leach's edit.

<sup>86</sup> 8 *Mod.* sometimes called *Modern Cases in Law and Equity*.

book, entitled *Modern Cases in Law and Equity*.”<sup>87</sup> In another, he says, that when 8 *Mod.* was cited, “the court treated that book with the contempt it deserved, and they all agreed that the case was wrong stated.”<sup>88</sup>

See, then, upon what crutches this lame cause hobbles.

Hawkins, (I don’t mean Leach’s Hawkins, but Hawkins’s Hawkins) refers by the letter (c) to three cases [53] only for the doctrine of conspiring to impoverish by indirect means. And as Hawkins was only compiling from books of reports, and only digesting and arranging the law he found there, it is, after all, the authorities he vouches that are the law, not his book, which is but the index to them. To these cases then let us resort, and if they be clear we get rid of all ambiguity.

*Rex. v. Kimberly and Mary North*,<sup>89</sup> was a false conspiracy to extort money by falsely accusing the party of being the father of a bastard child. The only question was, whether the mere conspiring, without carrying the conspiracy into effect, was a completion of the crime, or whether there must be a manifestation of the guilty intention by some other overt act; but it was held that the false and malicious intention, being the gist of the offence, was manifested by the very act of conspiring, which was of itself a sufficient overt act. What was there of indirect means in that case, if indirect be meant to express any thing else than unlawful?

*Rex v. Alderman Sterling and others*,<sup>90</sup> was an *ex officio* information and concerned the king’s revenue. Sixteen or seventeen brewers, of London, were indicted

<sup>87</sup> 1 Burr. 386.

<sup>88</sup> 3 Burr. 1326.

<sup>89</sup> 1 Lev. 62.

<sup>90</sup> *Ibid.* 125.

for making orders that no beer called gallon beer should be sold but at certain price. This order was averred to have been made with a view to impoverish the king's excisemen, and bring them into hatred and contempt with the people, and to excite the people to mutiny and sedition, and to pull down the excise house, and to deprive the king of £118,000 rent, which he had by the tax upon this beer. The jury found them guilty of meeting and consulting to impoverish the excisemen, and of nothing [54] more. It was moved, in arrest of judgment, that if any injury was done it was to be remedied by civil suit, and the excisemen being private individuals, that no public prosecution could be maintained. The judges so far admitted this as a general principle, but distinguished between this and other cases; because, they said, it concerned the king's revenue, and was therefore a public offence. The principle of the decision seems truly to have been this, that "*reges habent longas manus.*" Be that as it will, this case proves clearly, that my interpretation of Hawkin's text is right; for if all confederacies by direct means to impoverish a third person, were guilty, there could have been no doubt in this case upon the special finding, and no room for the distinction drawn by the court, nor for any argument at all, whereas the court adjourned several times to hear further argument, and to have further deliberation.

This was the case referred to from the "miserable bad book," by the title of *The Tub-women v. The Brewers of London*. It seemed to puzzle the counsel in Philadelphia, and it puzzles us no less, to divine who these same tub-women could be.

The solution of the difficulty may be this: there was formerly in the exchequer a barrister called the tubman,

who was a king's counsel, and had precedence. It might have been his duty to file this information; and the cause, which would improperly have been entitled *The Tubman v. The Brewers*, was still more so by this reporter, whom the court of king's bench state to have been a *mistater* of cases, called *The Tub-women v. The Brewers*. It was about gallon beer. Gallons and tubs have some affinity, gallons being but the diminutive of tubs, *sic canibus catulos similes sic matribus hædos*. And between tubmen [55] and tub-women there is but a syllable. A reporter so ignorant of men and things might mistake, as was his habit, and send forth the case in his report with this whimsical title.

The same case is related in Keble's *Reports*,<sup>91</sup> where the various adjournments are stated, and the arguments on each day. The judges either did not well understand each other, or I do not well understand them. There are many confused dicta through the case, and I leave it to my learned adversaries to make what use they can of them.

The other cases referred to by Hawkins are for the purpose of showing that a conspiracy is of itself a crime, though never followed up to its execution. As they turn avowedly on the common law, I should wish, if I did not fear to fatigue the court with an argument already from necessity too long, briefly to run over the matter of them, in order to show more fully how they all fall under the definition of conspiracy at common law, on which we rely, and how remote they are, one and all, from the nature of the present charge; falsehood and malice will be found to be the ground of every one of them; or else maintenance of other men's quarrels, for the purposes of oppression.

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<sup>91</sup> 1 Keb. 350.

(It being now three o'clock, and the court obliged to attend the sittings of the board of common council, the argument was adjourned till the following morning.)

Tuesday, December 19, 11 o'clock. The counsel proceeded briefly to examine the cases in the margin of the folio editions of Hawkins, referred to in the passage cited. . . .

[The following cases are cited and commented upon: *Arundel v. Tregono*, Yelv., 116; *Throgmorton's case*, Cro. Eliz. 56, (a) Leach's edit., Poulterer's Case, 9 Co. 55b; *Grey de Groby's Case*, Moore, 788; 2 Rolle's Abridgment 77, tit. Conspirators, pl 2 and 3. *King v. Harrison et al.*, 1 Vent 303, 304; *King v. Tracy*, 6 Mod. 178; *Queen v. Best*, 6 Mod. 185.]

[The following cases are cited and commented upon: *King v. Brissac and Scott*, 4 East 171; *Rex v. Watson*, 1 Wilson, 41; *Rex v. John and Mary Sprogg*, 2 Burr, 993.]

Such are the authorities referred to by Serjeant Hawkins, whose silence alone would be an argument against any such indictment as this, and yet his name is surreptitiously used to countenance such absurdities.

If there be a few modern cases more lax, and where the principle has been shaken, it may be in some measure owing to these very corruptions, because as law works are in general compilations, an error soon multiplies, and that which has but one single source, and that in ignorance or mistake, being copied and transcribed, and interlarded into the writings of good and correct [61] authors, does often deceive, and at length takes the imposing title of an authority.

I shall examine a few of the modern cases of conspiracy at common law. They will show that deceit

is always essential; that in some sense or other they are all tinctured with the *crimina falsi*.

[62] . . . The liberty I take in protesting against this indiscriminating adoption of the common law, will appear less adventurous if it be considered, that a great portion of the British empire, though governed by one monarch, and represented in one parliament, has not thought proper to adopt any part of it. The Scotch, less favoured than the English in soil and climate, and other physical advantages, yet, as moral beings, are surely not inferior, and out of their mountains and their moors come men able to assume and maintain stations in the intellectual world before unoccupied or unclaimed. If the common law were like the divine system how could this be? Would not those who were formed under its luminous auspices as far transcend all others as truth excels error? for laws and religion are the fountains of education, from which national character is derived. But the Scotch, when broken by unsuccessful rebellion, and the disastrous chances of war, were brought to surrender their independent monarchy, their philly-beg and kilt, but never would consent to the laws or religious establishments of England. If, then, so important a portion of the British island can do so well without any part of the common law, can it be necessary for us superstitiously to adopt every part of it?

The Irish had the common law forced on them. Their melancholy history is now well understood. And from the scintillations of exalted genius which emanate from the ruins of Ireland, it may be imagined what a mass of excellence lies brutalized and benumbed by vitious institutions.

[63] The Irish had an ancient code which they

revered. It was called the law of the judges, or the Brehon law. What it was it is difficult to say; for with the other interesting monuments of that nation's antiquity, it was trodden under the hoof of the satyr that invaded her. Sir William Blackstone,<sup>92</sup> in treating of the subjection of the Irish to the English laws, has had need of all his flexibility, and the authors he refers to are chiefly interested or official calumniators. After slightly touching upon the conquest, and planting, (by which planting is meant, settling new adventurers upon the tombs of the slaughtered,) he says, the inhabitants are, for the most part, descended from the English, which is a mistake, for one half of them do not use the English language, even at this day. "King John," he says, "went over, carrying with him many able sages of the law, and there, by his letters patent, in right of dominion of conquest, ordained, that Ireland should be governed by the laws of England." King John was a vile king. He murdered his brother's first born, and made a footstool of his neck for the servant of a pope; and if we judge of his sages by himself, we can believe nothing good of them. It is curious, that the same author, in the same page, says, that the same laws which king John and his sages then ordained, had before been sworn to under Henry II. at the council of Lismore; yet so much were they detested, that afterwards Henry III. and Edward I. were obliged to renew the injunction. "And," adds the author, "at length, in a parliament holden at Kilkenny, 40 Edw. III. under Lionel, Duke of Clarence, then lord lieutenant of Ireland, the [64] Brehon law was formally abolished, it being declared to be indeed no law, but a lewd custom, crept in of later times." What

<sup>92</sup> 1 *Com. 101*.

they meant by a lewd custom, crept of later times, I know not; but the statutes of Kilkenny, which came after it, are, of all laws that ever were enacted, the most atrocious; and lewd, indeed, must the custom be, that was not ill exchanged for them. No wonder that the "wild natives," even in the days of Elizabeth, still kept and preserved their Brehon law, of which its enemies are constrained to say, "that it was a rule of right, unwritten, but declared by tradition from one to another, (like the common law,) in which, oftentimes, there appeared a great show of equity, though it was repugnant both to God's laws and man's."<sup>93</sup>

What happened in Ireland must happen here, if we acknowledge ourselves subject to the common law of England. Whatever statutes have modified the common law in England to the exigencies of the times, not having force in this country, we should have the laws of the Tudors, and the Stewarts, unless we adopt something like Poyning's law, acknowledging our inferiority to the English, and making their laws our laws. The Irish, at one time, could make no laws in their parliament, that were not first certified under the great seal of England; so that the laws were made first, and the parliament held afterwards, to enact them.<sup>94</sup> Is not this verifying the saying of Marquis Beccaria, that the judicial system of every country is two or three hundred years behind its progress in civilization? Are we bound to this by any, and what necessity?

[65] From the books I see in court, I presume precedents will be quoted of English indictments of similar nature, concluding as at common law; and from that it will be argued, that combinations of journey-

<sup>93</sup> Edm. Spencer's *State of Ireland*, p. 1513. Ed. Hughes.

<sup>94</sup> 4 *Inst.* 353.

men are indictable at common law. But the answer to that is very obvious. The offence may be by statute, and by statute alone; and yet the indictment as at common law is the proper form. When an offence is created by statute, and the statute gives no particular penalty, the indictment not only may, but must, be laid at common law, and a general judgment will be given, as of a misdemeanor at common law.<sup>95</sup> Such precedents, therefore, cannot prove, that such combinations were ever supposed to have been indictable by virtue of the common law, otherwise than as contraventions of the English statutes, which surely have no force with us.

In an Irish work<sup>96</sup> of great authority, which has been several times printed in England, there is a passage which very clearly illustrates this position. "If any tradesmen, artificers, labourers, or servants, shall combine and conspire not to work at rates, fixed by the justices, this is a misdemeanor at common law, and punishable with fine and imprisonment." The fixing of rates by the justices is, by virtue of the statutes of labourers, in force in Ireland, being fixed by statute. The combining to violate that statute is an offence indictable as at common law, but would be no misdemeanor without the statute. In *Rex v. Crisp*,<sup>97</sup> which was for a statutable conspiracy, the indictment has this averment in the body [66] of it; "*contra leges et statuta hujus regni anglie*," and yet concludes as at common law, viz. *contra pacem*.

Through all the counts of this indictment, it is to be remarked, that there is but one overt act stated, which can, in any sense, be held criminal, and that is conspiring to refuse to work unless under certain condi-

<sup>95</sup> "*Rex v. Smith*," 2 Doug. 441.

<sup>96</sup> Bollon's *Justice*, lib. 2. c. 5, §24.

<sup>97</sup> Trem. P. C. 82.

tions. I should like to know what law compels a man to work upon terms not advantageous or agreeable to him. As to those counts which contain no overt act, but merely charge the defendants with conspiring to impoverish by indirect means, and impoverishing by indirect means, I scarcely think them worth an observation. They have all the kinds of uncertainty which renders an indictment a nullity. I shall, however, leave the indictment to be analyzed by my learned colleague, who will do more justice to the subject. The observations which the novelty and importance of this cause have drawn from me, having, on mere preliminary topics, gone to too great lengths, a few general remarks shall close what I have to say.

Every conspiracy must be a trespass, that is, an illegal act; but every trespass is not an indictable offence, but, in most cases, the remedy is by civil action. The only injury that can be complained of, if there be any, must be of a private nature, whether it be to Whittess or the masters. For instance, where servants or apprentices are seduced, there the remedy is by civil action, not by indictment.<sup>98</sup>

Before the mutiny act in England, soldiers bound to serve the king in his wars, might quit his service, unless *flagrante bello*; but the masters here seem to think [67] the journeymen bound to serve them through life, for whatever wages they choose to grant them. The one party must, in that case, be more than kings, and the other less than subjects.

Whittess had become one of their society, and agreed to their regulations. They are charged with combining not to work with Whittess (for such is the substance of it) till he should pay the fine he had agreed to pay,

<sup>98</sup> 3 Burr. 1321.

for breaking their rules and orders. What is there indictable in all that, supposing it ever so true. That they will not work for the employers who employ him. What is that more than saying they will not work along with him who is not contented to abide by them.

I think the law of Solon applies to this case, which declared, that in times of public division no man should be neutral. That law has, perhaps, more wisdom than appears at first view. It tended to obviate the evils of deception and dissimulation. It prevented matters from being carried to extremity, as it gave each party a clear knowledge of its own strength, and furnished a measure by which the success of the struggle might be foreseen, and useless contest avoided. But how is it here? Whittess violates the rules and ordinances, to the observance of which he had bound himself. He goes to the adversaries' camp, and because they will not go with him they are indicted. If all the masters were on one side, and all the workmen on the other, the contest must soon end sufficiently to the advantage of the employers. If the majority of the workmen were content with their wages, the majority would be harmless; but if an individual will seek to better himself at the expense of his fellows, when they are suffering privation to obtain terms, it is not hard that they leave him to his employers; [68] and the most inoffensive manner in which they can show their displeasure, is by shaking the dust off their feet, and leaving the shop where he is engaged. If they do this without violence or fraud, without breach of the peace, disorder or violation of any contract, duty, or moral obligation, it is burlesque to call that a conspiracy indictable.

If it be clear, from all these authorities, that such

indictments are not conformable to our laws or constitution; that none such were ever known in England till the time of the statutes of labourers; and that none such were ever prosecuted to judgment in America, because there never were any such statutes; then I shall conclude with the words of Judge Tucker, an author worthy of confidence, "that neither the law of England, nor that of any other country, can have any obligation in this state; and that no offence created by statute in England can, for that reason, be deemed an offence against the United States; and that all statutory offences against the laws of England, are therefore only to be regarded as offences in that kingdom, and not as having any existence either in the state of Virginia, or in the United States." The same may surely be said of New-York, where the whole body of the English statutes has been at once repealed, and where the statutes which created the offence here indicted, never were in force at any time. . . .

[69] . . . To ensure a favourable decision from the court on our motion to quash this indictment for a conspiracy, I shall think it sufficient to establish these two principles as law: 1st. That a conspiracy to do any act, is not indictable unless the act to be done is unlawful; and, 2d. That it must appear upon the face of the indictment that the act to be done is unlawful; or, according to an authority to which I shall by and by refer the court, whatever circumstances are necessary to show the act unlawful must be set out, which indeed is but a corollary from the first proposition. It will follow that if the indictment which is now before the court, does charge the defendants with a combination or confederacy to do an unlawful act; or if the indictment does not show that the act which it

charges them with having conspired to do was unlawful, the indictment must be quashed.

As to the first principle which I have mentioned, it appears to me a self-evident proposition, and I shall not [70] attempt to offer any argument to support it until I hear that the counsel opposed to us mean to deny it. If they do they must intend to maintain its converse, that is to say, they must endeavour to establish that every combination or confederacy, to do a lawful act, is an offence. It seems to me that it is only necessary to advert to what would be the infallible consequences of adopting such a principle to show its absurdity. If a conspiracy, whether to do right or wrong, be unlawful, the parties to every association would be offenders; all our religious, benevolent, charitable, and political societies would be violations of the law. And I do not know why upon this principle carried to its extent, men who unite their means and exertions for mercantile gain, would not be criminals.

The numerous counts in the indictment will, for the purposes of the argument which I am about to offer, admit of a classification; and I shall consider them under the following arrangement: The first, second, third and eighth counts may form one class; the fourth, fifth and ninth counts form a second class; and the sixth and seventh counts will have a separate consideration. The 1st, 2d, 3d, and 8th counts have each a similar recital, by which the offence charged in each of these counts against the defendants, is introduced. This recital states that the defendants, intending to form a club, and to make illegal by-laws, and to extort money, did conspire. It is to be observed that here is no charge against the defendants. This recital is mere matter of inducement. It is not said that they conspired to form

a club, or to make illegal by-laws, or to extort money; but on the contrary, the conspiracy is charged to have taken place [71] subsequently to these intentions, which, from aught that appears on the indictment, were harboured by the defendants, separately and individually, before the conspiracy was formed. Nor is it stated that the conspiracy was for either of these illegal purposes, if they were illegal, but for totally other objects. It cannot be considered, I think, that the defendants are to be put to answer these recitals as criminal accusations, because there is nothing in the recitals which charge any thing against the defendants as an offence. On the contrary, all that is said in the recitals is but to introduce the charge of conspiracy which immediately follows the recital in each count.

But let us suppose the matter contained in the recitals was put in the form of a charge in the most positive and direct manner. As, for instance, if the indictment had said, that the defendants did intend to form a club. First, let me ask, is an intention of any kind, though it be to commit ever so atrocious an offence, punishable by the common law? I think I may venture to answer that it is not. Then much less can an intention to form a club be so. And however immoral it may be in an individual, or any number of individuals, to have an intent to pass illegal by-laws, or to extort money, it is an immorality for which they are not answerable to any human laws.

Another objection to this part of the indictment is, that if the public prosecutor had intended to make this intent to pass illegal by-laws, and to extort money, a part of the substance of his charges against the defendants, he should have set out in his indictment what illegal laws they did intend to pass, that the court might

see that they were illegal; and he should also have stated [72] by what means they did intend to extort money. If there was a direct charge that the defendants did pass illegal by-laws, and that they did extort money, the indictment could not be supported without a specification of the laws passed, and of the means of extortion, as I shall by and by show to the court when I come to consider the counts which I have arranged in a second class. Certainly, then, this charge of an intent, and that introduced by way of recital only, can never be sufficient.

I think it will appear from what I have said, that in these recitals there is no crime sufficiently charged against the defendants. And I beg the court to observe, that the recitals are entirely independent of what may be called the substantial parts of the indictment. As they can in no manner assist the charge of conspiracy, so neither can they derive any support from that charge. The recitals, and the charge of conspiracy, are as little connected as if they formed separate counts. Indeed, the recitals are in opposition to the charges; for the recitals imply that the defendants intended to do one thing, and they are charged with having conspired to do another. They intended to form a club to make illegal by-laws to extort money, and they conspired not to work in the same shop with one who was not a member of their society; nor with any who infringed their rules, until he paid his fine; nor with any master who employed more than two apprentices.

Dismissing the recitals to these four counts, I shall proceed to an examination of the direct charge contained in each, with a view to show that the acts which it is said the defendants conspired to perform are not illegal acts, and therefore a conspiracy to do these acts is not indictable.

[73] The first count charges, that the defendants conspired and agreed that they would not work with any journeyman who was not a member of their society. The second, that they would not work with any one who infringed their by-laws. The third contains the same charge, with the addition that they would not work with an infractor of their laws till he paid a fine. And the eighth count charges, that they would not work for any master who employed more than two apprentices.

Here let it be observed, that the defendants are not charged with having conspired to do any act, much less an unlawful act. The agreement among them, as the indictment states, is not to act. Now will it be said that it would have been unlawful for these defendants or any other set of men, to have come to a resolution, or to an agreement, if you please, that they would not work at all? Let us know where is the law that says a man once a labourer shall for ever remain so; nay, that he shall for ever labour. There is no such tyrannical rule in this country. And if men may resolve that they will abandon their trade and live idle, why may they not make a qualified resolution of this nature? Why may they not say that they will only work under circumstances agreeable to themselves?

But to examine the substances of the charges in these respective counts more particularly. So far from having been any thing illegal or immoral in the conspiracy or agreement to which these defendants were parties, the court will find that their confederacy, and the rules which they adopted, were not only legal but highly meritorious. Like most other societies of the same nature, the journeymen shoemakers' society is a charitable institution.

[74] They raise a fund, which is sacred to the use of their helpless or unfortunate members. and to the relief

of the widows and orphans of their departed brethren. Their by-laws are, each member shall contribute to this fund. And to induce every one to join the society, while by his labour he may make something to spare for their fund, they refuse to work with any one who is so wanting in charity as not to join them. And as a sanction to their laws, they have also declared that they will not work with any who shall break their by-laws, that is, who shall refuse to pay his dues, till he has paid a fine. Who will say that an association of this nature is illegal? What human laws can presume to punish acts, which, according to the laws of God are deserving of rewards even in heaven? or can it be said that the resolution not to work for a master who employed more than two apprentices, was unpraiseworthy? The masters were in the habit of crowding their shops with more apprentices than they could instruct. Two was thought as many as one man could do justice by. The journeymen shoemakers therefore determined to set their faces against the rapacity of the masters, and refused to work for those who were so unjust as to delude with the promise of instruction which it was impossible they could give. In England, the legislature has interfered on this point, and has by statute limited the number of apprentices which certain tradesmen may take.

It is to be observed, that neither of these counts charge that the design of the defendants was to raise their wages. And though it should be admitted that a conspiracy to raise their wages would subject the defendants to an indictment, [75] yet I doubt if any authority can be found to support an indictment for charges like these. The 4th, 5th, and 9th counts form another class, my objections to which I shall proceed to submit to the court. The 4th count charges, that the

defendants, intending to injure E. W. conspired, by wrongful and indirect means to impoverish him, and hinder him from following his trade, and that they did, in pursuance of their conspiracy, indirectly hinder him from following his trade. The 5th count varies from the fourth only in this, that it does not charge that the defendants effected the design of their conspiracy. And the 9th count is similar to the fifth, except that it charges that the conspiracy was to injure, by indirect means, certain master workmen who are named.

Now it may well have been that the defendants intended to injure the persons named in these counts, by indirect, yet by perfectly lawful means. If they had agreed that they would work better or cheaper than the persons named, this would have been an indirect means of injuring them. If they had combined in the invention of some improvement of the cordwainer's art, which should have entitled them to a patent, this would have given the defendants a monopoly which could not fail of being an indirect means of injuring all who were not sharers in it. If they had agreed to increase the number of master workmen in our city by inducing those who are now settled elsewhere to take their abode with us; or, if the defendants had agreed that they would no longer work as journeymen, but establish themselves as masters. All these would have been indirect [76] means of impoverishing and injuring other persons engaged in the trade. But will it be said that indirect means like these would be unlawful means? I am sure it will not. It follows, then, that the defendants are not charged by either of these counts, with a conspiracy to do an unlawful act.

But if we should say that by the terms wrongful, wicked, and indirect means, are to be intended unlaw-

ful means, then there remains the important objection, that the indictment does not specify the necessary circumstances to show that the intended means were unlawful.

In Hale's *History of the Pleas of the Crown*, it is said, that an indictment is nothing else but a plain, brief, and certain narrative of an offence committed by any person, and of the necessary circumstances that concur to ascertain the fact and its nature.<sup>99</sup>

In Bacon's *Abr. tit. Indictment*, G. where the court will find a number of authorities quoted to the same point, it is said that an indictment must expressly allege every thing material in the description of the substance, nature, and manner of the crime; for no intendment shall be admitted to supply a defect of this kind.

Again, in the same book, (*ubi supra*,) it is said that the whole fact ought to be set forth with such certainty that it may judicially appear to the court that the indicters have not gone upon insufficient premises.

Conformably to these principles, it has been decided, "that an indictment of perjury, not showing in what manner, and in what court, the false oath was taken, is insufficient." So in *The King v. Mason*,<sup>100</sup> it was adjudged, that an indictment, charging the defendant with obtaining money by false pretences, was insufficient, as it [77] did not show what the false pretences were. In the case of *Rex v. Munon*,<sup>101</sup> an indictment for procuring a note by false tokens, was held bad, because it did not specify what the false tokens were.

The idea of indicting these defendants upon these general words, it is very probable has been taken by the person who drew this indictment from an expression in

<sup>99</sup> 2 Hale's *H. P. C.* 169.

<sup>100</sup> 2 *Term Rep.* 581.

<sup>101</sup> *Stra.* 1127.

Hawkins's *Pleas of the Crown*, which I have no doubt will be often quoted by the adverse counsel; for I believe no precedent for such an indictment can be produced. Serjeant Hawkins<sup>102</sup> says, that a person may be punished for confederating "by indirect means to impoverish a third person." But does it follow that by these general expressions, Hawkins meant to say that the confederacy would be unlawful, though the proposed indirect means were lawful? Much less can it follow that he intended to say that it was not necessary to specify the means in the indictment. Suppose there were a statute which enacted, that to impoverish another by indirect means, should be a crime, would it not be sufficient to pursue in the indictment the words of the statute, and to omit in an indictment in such a statute what were the indirect means to which the defendant had resorted? If general charges of this nature could be supported, no man put to answer them would know from his accusation how to prepare for his defence; for he might not learn, till he heard it from the mouths of his accusers on his trial, what were the circumstances alleged against him.

Reserving any further observations on these counts of the second class till I have had the pleasure of hearing the learned counsel concerned for the prosecution, I shall proceed [78] to submit to the court some remarks on the sixth count. Supposing it to be unlawful for tradesmen to conspire to raise their wages, let me beg the court to remark that there is no such charge against the defendants in this count. The charge is of a very different nature. It is, that they agreed that they would not work under certain prices. Now let me ask, if these persons had agreed not to work at all, is there in

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<sup>102</sup> B. 1. c. 72.

this country a law to compel a man to work if he chooses to remain idle? What law is there to punish the lazy lawyer, the negligent merchant, or sleepy parson? If there be none for persons of these classes, by what authority can you punish the idle shoemaker? And if a man may lawfully determine to live in idleness, why may he not make qualified his resolution not to work but on certain conditions? Why is it not lawful for him to say I will work if you will pay me at a certain rate, but if you will not do this you must go without my work? There is no law in this country, and I believe I might say there is no law on earth, which denounces as illegal such conduct. There is, therefore, no charge in this count to do an illegal act; but objections which have been made to other counts again occur as applicable to this. In the language of an authority I have quoted, "the circumstances necessary to constitute the imputed crime are not set out." One of these circumstances is, that the defendants were not content to work for usual wages. Yet there is no specification of what the usual wages were, nor is it shown that the prices which they had limited for themselves were over these usual wages. It will not, I presume, be contended that it would have been a crime if the defendants had agreed that they would be content with less than the usual rates. How does it appear, then, that their [79] prices were not below what was the customary compensation? We must recollect that the authorities to which I have already referred the court, show, that in an indictment, nothing is to be taken by intendment. It is worthy of remark, that the framer of this indictment was so conscious that he was not charging the defendants with a conspiracy to do an unlawful act, that he has departed from the usual phraseology in this respect, and omitting the word unlawfully, has contented himself with alleg-

ing that the defendants wickedly and corruptly conspired.

I have said that this count does not expressly charge the defendants with a conspiracy to raise their wages; and that no such charge can be made out by implication; and that of course the allegation that they would not work under certain prices, cannot amount to a charge that they intended to raise their wages above the usual prices. But I shall admit, for the sake of argument, that this indictment does contain, in legal form, an accusation that the defendants did unlawfully conspire to raise the price of their labour above what were the customary wages at the time of the conspiracy. And this will bring us to an important consideration; because I shall contend, and I hope to satisfy the court, that neither by the common law of England, nor by the laws of this country, was such a conspiracy punishable; for by neither the one nor the other would it be a conspiracy to do an illegal act.

A conspiracy to do an act which is forbidden by the law, is a conspiracy to do an illegal act, and therefore such a conspiracy is a crime. And every indictment for such a conspiracy must be an indictment at common law, and not an indictment upon the statute; because the [80]conspiracy is a common law offence; the statute only giving to the act to be done that unlawful character which is necessary to make the conspiracy illegal.

It is only on this ground that conspiracies to raise wages are indictable at common law in England. For I believe I may venture to assert, that no instance of an indictment for a conspiracy of this nature can be found that was prior to the statutes passed in England for regulating the wages of her craftsmen.

I have traced these statutes for regulating wages as

far back as to the beginning of the fourteenth century, 33 Edw. I. Other statutes on the same subject were passed in the reigns of Rich. II. Edw. III. and of Elizabeth, *vid.* Keb. stat. 69. 2 Reev. *Hist. Eng. Law*, 388, 389. 4 Burns's *Just.* 164.

These statutes, or some of them, made it unlawful, not only for an individual craftsman to ask or receive more than a specified price for his labour; but it made it also illegal for an employer to give more than at the established rates. According, then, to the principles for which we contend, it having become by statute an illegal act for one or more individuals to raise their wages, a conspiracy to do that act became an offence punishable by the common law of England.

There is not an authority in the English books which is not consistent with this principle. The case of *The King v. Wise*, in 8 *Mod.* whether it be a good or bad authority, so far from being against us, is in our favour; because, it appears from the report of that case, that the indictment was grounded on the statute, though it concluded at common law. The text of Hawkins, and the notes upon it, are all reconcilable to this doctrine, as are also all the authorities which are quoted in Hawkins to support the principles he there lays down.

[81] In the *Crown Cir. Comp.* page 257, at the foot of an indictment at common law for a conspiracy among workmen to raise their wages, is given, in a note, the statute on which the indictment was founded; thereby manifesting, I think, that the author of that book thought that no such indictment could have been supported without the statute.

In Douglas's *Reports*, 424. *The King v. Smith* and others, is the case of an indictment for obstructing the execution of powers granted by statute for making a

horse-towing path on the River Thames, which it is decided need not, and ought not, to conclude against the form of the statute, on the ground that any thing done in contravention of a statute is an illegal act, and as such punishable at the common law.

It is in vain, therefore, for the gentlemen, to show us English precedents for conspiracies to raise wages, concluding at common law, or to cite to us authorities which say that such indictments may be maintained. We admit all this. But we say, that without the English statutes, which make the act which is the object of the conspiracy illegal, no such indictments could be supported in the English courts.

But a second position which I have taken, and which I shall now attempt to support, is, that a conspiracy of this nature may have been criminal by the common law of England, independently of her statutable provisions, yet that that part of her common law was never in force in this country.

I presume that I may take for granted, that this country, when it was settled by our English ancestors was to be considered, in relation to the parent state, as a desert and uncultivated country, claimed by right of occupancy [82] only. And that the laws of colonization which apply to emigrations from a parent state to such a country, were applicable to those who first planted themselves on these shores as subjects of the English monarchy. For if this were to be considered as a conquered country, our common law would be the customs of the Mohawks, or of the Dutch ancestry; or if this were a ceded country, we should have the act of cession or treaty to appeal to, to ascertain what laws were thereafter to govern.

If we are to be considered as the representatives of

colonists, claiming by right of occupancy, our ancestors brought with them only "such of the laws of the parent state, as were applicable to their own situation, and the condition of an infant colony."

If it were part of the common law of England, when our ancestors emigrated to this side of the Atlantic, that workmen should not combine to raise their wages, who can say that this was a part of the common law which our forefathers brought with them? Will it be contended that such a rule was applicable, to their situation, or to the condition of an infant colony? No man will contend, I think, that a law of this kind can be beneficial in a society, until its members become numerous, and its arts and manufactures have arrived to a state which they can only attain after they have progressed through ages. The infant colony, then, established by our ancestors, was not governed by the law now attempted to be enforced, if it were a part of the English common law. And if it was not the law of the colony in its infancy, no such law could afterwards be imposed on the colonists by the customs or usages of the mother country. And it certainly has not been by any legislative act either of the parent state, or of the colony.

[83] That the whole of the common law of England is not in force in this state, cannot be denied. The constitution of the state adopts a part of the common law only. By the thirty-fifth section of the constitution, it is declared, that such parts of the common law of England, as made a part of the colonial law on the 19th of April, 1775, should be law in this state. Now, then, we call upon the adverse counsel to show us that this common law of England, which they would now enforce here, was ever a part of our colonial law. To satisfy the court that it was so, they should have shown that at

some time it had been enforced. But although hundreds of years have passed, there is no instance of an attempt to enforce such a rule. There is not even a tradition of there having been a prosecution of this nature. Can it be believed, that combinations of this kind have not before existed? And can there be stronger evidence that this was never a part of the colonial or common law of the state, than that no such prosecution under the jurisdiction of our courts has ever before been heard of?

I have had an opportunity of examining the records of the criminal proceedings of our tribunals for a great number of years back. I have found an information which was preferred in the year 1741, against certain bakers, for combining not to bake bread but on certain terms. This indictment, however, concludes contrary to the form of the statutes. And it appears that no judgment was ever rendered upon it, so that it cannot be appealed to as an authority on either side; or if it is in favour of either, it must be the defendants, because it appears that the crime there charged was laid as an offence against some statutes, and not as an offence at common law.

[84] I have applied these observations to the sixth count, because this is the only count on which the question, whether it be unlawful for workmen to raise their wages, can arise. I must detain the court a few minutes longer with some observations on the seventh count, which is the only one that remains to be examined. This count must follow the fate of the sixth count, because every objection which has been made to that count, applies to this. But there are some other objections to this count which I will briefly notice to the court. The charge is, that the defendants conspired



nal. 3. That the counts are good both in form and substance. . .

[86]. . . As to the general question of the adoption of the common law, my argument is this: The province of New-York was a conquered and ceded country,<sup>103</sup> and it is not disputed that in such case the ancient law remains until changed by the new sovereign.<sup>104</sup> All that is incumbent upon us is, to show that that was done, and that in place of the former laws of the colony, the common law of England was established, and fully and entirely adopted. To prove that the common law of England was so established as the law of the colony of New-York, I rely on the evidence of the journals of the assembly.<sup>105</sup> The patent to his Excellency the Governor, (page 5.) contains a grant of the common law of England, and every defect or imperfection of their law was to be supplied by recurrence to, and adoption of, the laws of England.<sup>106</sup>

As to what one of the counsel for the defendants has urged with so much wit, vivacity, and subtilty, touching the unfitness of the common law, I appeal to the very authority of those fathers of our revolution whose shades he has invoked. In that great act wherein we justify our revolution, they are so far from complaining in terms of invective against the common law, that they set it forth as their best birthright; and their loudest complaint is that they were deprived of its valuable protection and its [87] beneficial provisions; and if that privation was so great an evil as to be a valid cause of a war and a revolution, we must conclude that they entertained a very different sentiment respecting it from

<sup>103</sup> 5 Hume's *Eng.* c. 64. p. 5.

<sup>104</sup> 1 Bla. *Com.* 108, 109. Cowp. 204. "Campbell v. Hall."

<sup>105</sup> 1 *Journal of Assembly*, p. 5.

<sup>106</sup> *Laws of New-York*, by Bradford, 1691. p. 15. 16.

that of the counsel who has appealed to them. Since, then, the sovereign can legislate in a ceded or conquered country, the patent of the King, according to the authority of Lord Mansfield, is conclusive.<sup>107</sup>

The constitution of the state of New-York runs thus: "And this convention doth further, in the name and by the authority of the good people of this state, ordain and declare, that such parts of the common law of England and Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this state, subject to such alterations and provisions as the legislature of this state shall from time to time make concerning the same."

And this convention doth further ordain, "that the resolves or resolutions of the congresses of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions as the legislature of this state may from time to time make concerning the same."<sup>108</sup>

In the body of this section, are these exceptions, viz. "that all such parts of the said common law, and all [88] such of the said statutes and acts aforesaid, or parts thereof, as may be construed to maintain or establish any particular denomination of Christians, or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government or

<sup>107</sup> Cowp. 204.

<sup>108</sup> *Laws of New-York*, p. 15. s. 35.

prerogatives, claimed or exercised by the king of Great Britain, and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they are hereby abrogated and rejected."

The only cases, then, in which the common law shall not prevail are here defined; but from these very exceptions it results that all the principles of the common law which are beneficial to the public, are in full force. And which of them can be more so than those which go to preserve the community from such combinations as would, if permitted, lay the community at the mercy of the conspirators, by enhancing the price at their will of the necessary articles of life.

This conspiracy, unnaturally to force the price of labour beyond its natural measure, is as dangerous as any kind of monopoly, and if it be tolerated, as well may regrating, forestalling, and every other pernicious combination.

Suppose all the bakers in New-York were to refuse to bake till they received an exorbitant remuneration. Suppose the butchers should enter into a similar combination, and if there be impunity for these, why shall not all other artisans do likewise? What will become of the poor, whose case the counsel takes so feelingly to heart? The rich will, by their money, find supplies; but what will be the sufferings of the poor classes?

[89] Suppose that some rich speculators, acting upon similar principles, should, in a cold winter, combine to purchase up all the wood, and refuse to sell it but at an extravagant advance, should we have no law to protect the poor against such oppression? And would it be argued, that without an express statute the law could furnish no remedy. As such acts would be against the

public good, and immoral in a high degree, they would therefore fall under the animadversions of the general law; and as offences against the whole community, be subject to public prosecution.

There are duties which every man owes to the society of which he enjoys the benefits and protection, which never can be detailed, but must be regulated by acknowledged principles of judicature. A baker, therefore, who lives by the supply of the public, shall not abuse that public by a sudden interested and malicious withholding of his ordinary supplies; but though it were otherwise, and that every individual was permitted, as far as in him lay, to distress his fellow-citizens, yet if he combines with others to do so, he is guilty of a distinct and well defined offence, that of an unlawful conspiracy, for which he is indictable and punishable.

We are as far as the defendants' counsel from saying that when any man finds his trade unprofitable, or prefers another occupation, or another course of life, he is not master of his own will; nor that he would in such case be indictable.

Mr. M'Nally<sup>109</sup> imputes great part of the distresses of the poor in Ireland to such combinations, which shows, that they who would prevent them, are more the friends than the oppressors of the poor.

[90] In Jacob's *Law Dictionary*,<sup>110</sup> the same doctrines as we contend for are laid down in an elementary manner as settled law; and it is there said that the statute 2 and 3 Edw. VI. c. 15. which is made against such combinations is still in force, but is seldom resorted to in this case; the proceedings being usually by indictment for conspiracy.

<sup>109</sup> M'Nally's *Just*, title *Combination*, p. 383.

<sup>110</sup> Word Conspiracy.

In the *Crown Circuit Companion*,<sup>111</sup> there is a precedent of an indictment for a conspiracy to raise wages. It is at common law, and in page 280, there is a note subjoined, which says, that an indictment may be drawn from that form on the statute, by pursuing the words of it and concluding contrary to the form of the statute in this case made and provided; which shows the offence to be indictable either on the statute or at common law.

The authority of Hawkins<sup>112</sup> goes further, and says, that though these acts be offences against the statutes, yet the form of the indictment must be at common law.

So in *The King v. Harris*,<sup>113</sup> it was held that the defendant was punishable by a common law indictment for the breach of orders made by the king and council; those orders being pursuant to an act of parliament.

In *The King v. Waddington*,<sup>114</sup> the charge was engrossing and forestalling hops. There were several statutes referred to on the subject of engrossing, all of which were then repealed; and it was held that the repeal of those statutes only left the offence as it was at common [91] law, and that upon general principles of immorality and public detriment, it was an indictable offence.

Blackstone,<sup>115</sup> treating of offences against public trade, says, that buying up large quantities of corn or other dead victuals, with intent to sell them again, must of course be injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion. And so the total engrossing of any commodity with intent to sell it at an unreasonable price, is an offence indictable and finable

<sup>111</sup> Dog. C. C. p. 279.

<sup>112</sup> Hawk. P. C. b. 2. c. 25. s. 116. p. 71.

<sup>113</sup> 4 Durnf. & East, p. 202.

<sup>114</sup> 1 East's Rep. p. 147.

<sup>115</sup> 4 Bl. Com. 158, 159.

at the common law, and the general penalty for the three offences of engrossing, regrating, and forestalling, (the statutes respecting them being all repealed by 12 Geo. III. c. 71.) is, as in other minute misdemeanors, fine and imprisonment at the discretion of the court. Now, as there is no difference in the principle, whether it be to raise the price of provisions or of other necessary articles by undue means, it is in vain to argue that they are not equally punishable at the common law.

The crime of which the defendants stand indicted, is well defined by Christian in his notes to the *Commentaries* where he says, "Conspiracy is a confederacy to injure an individual, or to do acts which are unlawful or prejudicial to the community."<sup>116</sup>

The case of the Cock Lane Ghost,<sup>117</sup> shows this still stronger. For there the conspiracy was to injure another by a mere phantom, which could have no reality.

The case of *The King v. Kimberly and Mary North*,<sup>118</sup> shows further, that conspiracy itself is an offence though no other act be done but that of conspiring merely.

Mr. Riker then cited a number of precedents to the various points of his argument, which will be found in [92] the argument of Emmet, who took similar ground. In the case of *The King v. Eccles*, reported in a note by the compiler of the *Crown Circuit Assistant*,<sup>119</sup> there was an indictment for conspiracy by indirect means, to impoverish one H. Booth, and to deprive him of the exercise of his trade as a taylor. It was moved in arrest of judgment that the charge was too general, because it did not specify any particular act, nor state by what

<sup>116</sup> 4 Bl. Com. 136. Christian's note 4.

<sup>117</sup> Bl. Rep. 348.

<sup>118</sup> 1 Lev. 62.

<sup>119</sup> C. C. Ass. p. 123.

means the conspiracy was effected: but the court held that it is not necessary to set out the means; the means of the conspiracy are evidence; conspiracy is the gist of the charge; and even to do a thing which is lawful in itself, by conspiracy is unlawful. The means are immaterial, if there was an illegal combination.

Mr. Colden has not, in stating the various counts in the indictment, given them their full effect. One of them, for instance, states, that the defendants compelled Corwin to discharge Whittess until he should have paid a fine imposed upon him. The counsel have given no reason why, if there be even one count good, the whole indictment should be quashed.

Macklin's case<sup>120</sup> was an indictment for conspiring to ruin the prosecutor in his profession as an actor.

In the same book<sup>121</sup> is a precedent against serge weavers, for refusing to work for a master who had employed a man contrary to certain rules entered into by conspiracy.

In the precedent given by Wentworth,<sup>122</sup> no other overt act is laid of any of the imputed charges than the mere act of conspiracy itself. The facts stated, and which will be proved in this case, are of a nature more hurtful to trade and to the public, than any set forth in the printed cases or precedents. Such for instance is that of [93] binding themselves not to work for employers who should have more than two apprentices; and regulating the work and wages of shoemakers and others, and imposing restraints and regulations too violent to be endured.

In this precedent, the fourth count is the same as the

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<sup>120</sup> *C. C.* 159, 160.

<sup>121</sup> *Ib.* p. 133.

<sup>122</sup> 4 *Went.* 100.

last in the present, and concludes "to the prejudice of divers masters," <sup>123</sup> &c.

Another indictment against curriers, <sup>124</sup> contains counts exactly similar to those which the counsel here would have quashed for insufficiency.

Why then arraign the common law with so much invective, or why dispute its principles when they are so beneficial and protecting? Why not give them efficacy in this country, when their tendency is to the public good? We have hitherto been happy and safe under the administration of the common law. And those who framed our constitution upon the downfall of British superiority and empire, still found nothing more advantageous to establish as a code than the ancient common law. Guarded with the exceptions of what alone was exceptionable, the doctrines of supremacy and prerogative, and any other principles, if such it contained, repugnant to our constitution, certainly, the restriction of illegal combinations to raise the price of articles of necessity, is as congenial to our constitution as any other parts of the common law.

Let not Sampson then apply his force, blindly to pull down a temple which it has required so many ages to build up. Let it stand and flourish until its rights become obnoxious or pernicious; until something more venerable or more sacred can be substituted in its stead. Our constitution has established it subject to such alterations [94] as it shall be found to require. If alterations become necessary, let them be duly considered and adopted, but let not the whole fabric be shaken or destroyed.

Mr. EMMET. I shall briefly dismiss a considerable part of the argument offered on the other side; not for

<sup>123</sup> Went. 112.

<sup>124</sup> *Ib.* 120.

any deficiency of respect to the counsel from whom it has proceeded, or to the learning and research which he has displayed; but because I do not consider it entirely relevant to this cause, nor properly addressed to this court. To the legislature, or a convention, the observations we have heard upon the absurdities of the common law, and the impropriety of its being received as a part of our legal code, might be correctly made if they were in truth well founded; but they appear to me extremely misplaced when offered to a court, the judges of which are bound and sworn to administer justice according to that common law, and who certainly have no authority to shake the foundations of the system under which they themselves are constituted. . . .

[Here follows a brief defense of the common law.]

[95]. . . It is also insisted upon, that many parts of the common law of England were never adopted here; and from the supposed uncertainty of what may not have been adopted, it is endeavoured to deduce an argument that so much relates to conspiracies of this description. The weakness of this reasoning is obvious; but in truth there is no uncertainty as to what parts of the common law have been adopted, and what rejected. The constitution has spoken on this subject. In the 35th article it [96] is "ordained, determined and declared, that all such parts of the common law as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by the king of Great Britain and his predecessors over the colony of New-York and its inhabitants, or are repugnant to that constitution, be, and they are hereby abrogated and rejected." These are the only exceptions. In every other respect, the common law which

could have been applied on the 19th of April, 1775, to any transaction within this colony, if the case calling for its application had then occurred, is now in force. No matter whether any such case had actually presented itself, or whether such application of the law had then been made; the only point to be considered is, whether, if it had occurred, there was any thing arising out of the colonial situation of this country which would have rendered the common law of England inapplicable to such a case. In illustration of this I may be permitted to state what I have been informed of on very respectable authority. It is to be observed that by the same article of the constitution, such parts of the English statute law as formed part of the law of the colony on that day, are continued as the law of this state. Under that provision Mr. Jones, since the Revolution, took, for the first time, the defence of twenty years adverse possession in an ejectment, although it had never been done or thought of while this country was a colony. But, nevertheless, the defence, when urged, was admitted, because it might have been applied and used before the 19th of April, 1775. Although at the first settling of the colony, or in its infant state, the common law [97] may have found no subject upon which particular parts of it could operate, yet it was the birthright of the colonists as a permanent rule of justice, which, at every new period of advancement and progress, would adapt itself to the rising exigency. If no precedent could be produced of such an indictment as this antecedent to the revolution, (which however, the counsel on the other side have themselves disproved by the production of an original record,) that might be attributed to the paucity of manufactures and manufacturers, which

rendered such a combination almost impossible and unknown; as in truth it was in England for centuries. But the opposite counsel must go further, and show that if it had occurred, there was something arising out of the colonial situation of the province, to render the common law inapplicable to the punishment of such an offence. This has not been attempted.

It is, however, contended, (and this is the last intrenchment of my adversaries on their grounds of objections,) that even in England this is not an offence at common law, but only growing out of particular statutes. It, therefore, becomes my business to show that this position is unfounded. The learned counsel, in support of it, seem sometimes to contend, that there is no case of conspiracy at common law, but where it is accompanied with the *crimen falsi*; as falsely prosecuting in a court of justice, or falsely imputing to a third person something infamous or injurious to him. That there are conspiracies of this kind is certain, and the appropriate punishment affixed to them shows that they are of a very aggravated nature. They induce an infamous punishment, by which the convicted person becomes disqualified from [98] giving evidence in a court of justice. There are, however, also conspiracies not infamous, in which the object to be accomplished is only the wrongful injury of a third person. An instance of this occurs, very apposite, though apparently somewhat trivial it is to be feared, in the case of *The King v. Cope*, where several were indicted for a conspiracy to ruin a card maker, by causing grease to be put into the paste, which had spoiled the cards. But to advert to a more important and atrocious case—that of *The King v. Delaval et al.* depends on the same principles

of private injury and public police and morality. There an information was granted against Sir Francis Blake Delaval and others, for a confederacy to assign over Miss Cately, then an apprentice to a musician, by her own consent, for the purpose of prostitution. The case before the court is also very intimately connected with public police and prosperity; and surely the argument cannot be favourably received, which, if pushed to its full extent, would prove that a crime so enormous and profligate as that of Sir Francis Delaval and his associates, is unpunishable by our law. Many other cases might be quoted, which, with those I have already mentioned, and those I shall of necessity cite in the course of my observations, clearly establish that the *crimen falsi* need not enter into conspiracy, as a common law offence. There is another and much more comprehensive description of what constitutes that offence, which we, on behalf of the prosecution, derive from Hawkins's *Pleas of the Crown*,<sup>125</sup> where that learned author lays it down that "there can be no doubt but that all confederacies whatever, wrongfully to prejudice a third person, are highly criminal at common law; as where divers persons confederate [99] together by indirect means to impoverish a third person," &c. To this I add *à fortiori*, and what follows from all the cases, that a conspiracy wrongfully to prejudice the public, is also highly criminal. In the editor's note on this passage of Hawkins, it is stated as flowing from the principle laid down in the text, that journey-men confederating and refusing to work unless for certain wages, may be indicted for a conspiracy, notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution, for

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<sup>125</sup> Vol. 2. b. 1. c. 72. p. 121.

the offence consists in the conspiring, and not in the refusal; and all conspiracies are illegal although the subject matter of them may be lawful. For this is cited 8 *Mod.* 11. and 320. and the opposite counsel triumphantly remark that the note is Mr. Leach's production, and 8 *Mod.* most despicable authority. The true consideration, however, is, whether the inference in the note is fairly deduced from the principle in the text, and whether that principle be in itself correct. As to the principle, it seems to me indisputable. Even if it rested only upon the authority of Hawkins, it would rest upon the first authority in the *Crown Law*, and one which will not mislead any judge who adopts it. But he also cites different authorities which support his position, and strongly bear upon this case. The most important is that of *Rex v. Sterling* and seventeen others.<sup>126</sup> That was an information against them, that they, with divers other brewers, &c. did factiously and unlawfully assemble themselves and conspire to impoverish the excisemen, and gave orders that no small beer, called gallon beer, should be made, &c. This conviction was supported, inasmuch as the conspiracy tends to the public, because it concerns the king's revenue; and also, [100] inasmuch as it being averred and found to be factiously and unlawfully done, that well enough explains what kind of impoverishment is intended. To this case it is objected, that it was decided for the prosecution, on account of the king's revenue, and that it is founded on a Star Chamber decision, which in itself pollutes the authority. As to the first objection, the king's revenue is only mentioned as indicating the manner in which this conspiracy tended to the public, which was one of the principles adopted;

<sup>126</sup> 1 Lev. 125. 1 Sid. 174. 1 Keb. 650.

the other was, that a conspiracy unlawfully to impoverish the excisemen, is also criminal. This case, therefore, shows, that either a conspiracy unlawfully to prejudice other individuals, or the public at large, is an offence. As to the Star Chamber decision, that only went to one point hereafter to be considered, that an overt act need not be done to complete the offence, which is likewise supported by the authority of 9 Co. the Poulterers' case, and many other decisions; but I must also observe that although the summary and arbitrary mode of proceeding in that court has rendered it justly odious, yet some of the best authorities we have in our reports, particularly in Coke's *Reports*, are Star Chamber cases.

The principle, then, which Hawkins lays down, and for which we contend, is fully supported by authority, and indeed has never till now been called in question. I shall, however, beg to refer those who wish to draw a line of distinction between English and American law on this subject, to 3 Wilson's *Lectures*, 118, where, treating of the law as it is in this country, he says, by that law (the common law) "all confederacies whatever, wrongfully to prejudice a third person, are highly criminal." The principle then being settled, let us [101] examine whether Mr. Leach's inference from it in his note be just. He cites 8 *Mod.* against which an outcry is raised on the authority of Burrow. That there are many cases defectively reported in that book is certain: but there are also many others the correctness of which has never been doubted. It is relied upon by the very latest writer on Crown Law, and that where he lays down the nature of conspiracy in a manner very applicable to our case. 1 East's *Crown Law*, 462. "An indictment lies wherever either the conspiracy is

entered into for a corrupt and illegal purpose, or for the use of unlawful means to effect a legal purpose, although such purpose be not effected." In the case of *The King v. The Journeymen Taylors of Cambridge*,<sup>127</sup> the doctrine is broadly laid down; and in support of it is vouched the case of *The Tub-women v. The Brewers of London*, which has puzzled not only the opposite counsel, but those who in a neighbouring state have examined this question, to know where that case is to be found, or what it means. My learned friend, however, has settled into the belief that it means the case of *The King v. Alderman Sterling and others*, already commented upon. In this I concur, though not for the reasons he assigns. For it having been tried and decided in the King's Bench, the Tubman of the Court of Exchequer could have nothing to say to it; and even if he had, I do not see why its being conducted by an officer called the Tubman of that court should entitle it to be called the Tub-women's case. The truth, I presume, is, that the small beer called gallon beer, mentioned in the report as being sold to the poor, was hawked about as similar beverages are in many countries, and sold in the streets by women, who, from their occupation and the vessel in which was contained [102] the article they sold, were called Tub-women. And when the brewers of London combined not to make or permit any more such beer to be made, by which the occupation of these women was ruined, it is very probable that their interest and activity against the brewers made them conspicuous personages in the cause, and procured that name to the case. Be that, however, as it may, the case of *The King v. Sterling* undoubtedly contains the principle that supports the case in 8 *Mod-*

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<sup>127</sup> 9 *Mod.* 11.

*ern*, that any conspiracy to do a wrongful act, tending to public injury, or the impoverishment of third persons, is indictable. But it is not on the authority of 8 *Modern* or the Tub-women's case alone that the particular application of that principle is founded. In Hawk. b. 2. c. 26. (vol. 4. p. 85.) the author, speaking of informations, and when they may be granted, recites, among other offences, "conspiracies to impoverish a certain set of lawful traders;" and if an information lies, inevitably an indictment will. In 12 *Mod.* 248. (case 427.) Anonymous, leave was given to file an information against several plate button makers for combining by covenants, not to sell under a set rate. Per Holt, C. J. "It is fit that all confederacies by those of a trade to raise their rates, should be suppressed." In Bolton's *Justice*, (which the learned counsel has cited, and the authority and accuracy of which I willingly admit,) vol. 2. p. 16. it is laid down that any such conspiracy is an offence at common law, notwithstanding there are statutes to enable justice to fix those rates, and punish any one exacting more. In 1 *Keb.* 650. (the report of *Rex v. Sterling*,) it is laid down by Hyde, C. J. that the very conspiracy, without an overt act, to raise the price of pepper, is punishable, or of any other merchandise. In [103] the *Liber Assisarum*, 27 Edw. III. p. 138, 139, there is set down a list of the matters to be inquired of by the inquests of office in the King's Bench, and among others, different conspiracies. The 19th article runs thus: "Also of merchants, who by covin and alliance among themselves, in any year put a certain price on wools, which are to be sold in the country, so that none of them will buy, or otherwise pass in the purchase of wools beyond the certain price which they themselves have ordained, to the great

impoverishment of the people," &c. Here is an authority pretty nearly as ancient as any that the most profound researches of the learned counsel have discovered, which does not depend on either the plague or the statutes of labourers, which marks a conspiracy to raise the price of an article of merchandise as an indictable crime, independent of any statute; for I challenge both my learned adversaries, to find any statute or ordinance bearing upon this offence. This authority is dependent in all its parts on the common law, and puts the gravamen on its true footing, "the great impoverishment of the people." Wool is mentioned only because it was one of the most important articles of merchandise in those days, and for a particular illustration, in the same way as pepper is specified in Keble; but the principle is of universal applicability. This authority is, I think, perfectly conclusive; but I must, before I dismiss this point, allude to the record brought into court by one of the opposite counsel. It is an information against journeymen bakers for a conspiracy not to bake till their wages were raised. On this they were tried and convicted before the revolution; but, as the counsel says, it does not appear that any sentence was ever passed, from which he [104] concludes that judgment was arrested. This undoubtedly is a *non sequitur*. The criminal may have become penitent, and the object of the prosecution having been obtained, judgment may never have been moved for; besides, it is well known that those records have been in such confusion that no one can tell what has happened in almost any cause. But if judgment was arrested, let me point out the fault in the information on which it may have happened. It concludes against the form of the statute, whereas it should

have concluded at common law, even if there had been a colonial statute regulating that subject, which does not appear. The gentlemen themselves allow and claim the benefit of this doctrine; and indeed it is settled on the same principle as governed the case of *The King v. Smith*,<sup>128</sup> which they have cited, that where powers are created by statute, it is an offence at common law to obstruct the execution of them, and such an indictment ought not to conclude against the statute. On account of this defect, perhaps, judgment was never had; but the learned counsel, by relying on this record, admits that his clients' case is similar to that of the bakers', and contends that such a combination on their part is not indictable. Observe, then, and let me illustrate the doctrine he maintains. Suppose the bakers of this city were to combine not to bake a loaf of bread till some demands, as to the assize, were complied with; and that the butchers were at the same time to combine not to sell a pound of meat till some object of theirs should be gained, what would be the consequence? A misfortune worse than pestilence would instantly befall the city. And are we to be told, that not only the individuals of those classes of men, [105] to whom, in the general distribution of employment, society has confided the care of providing for its most important wants, may singly abandon their duty; but that those classes *en masse*, without any intention of permanently relinquishing or changing their occupations, but merely as a measure of extortion from the necessities of others, for private interest, may lawfully conspire together to inflict the most terrible calamities on the community; and this is called the mere exercise of individual rights, and the toleration of it is considered as sound political

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<sup>128</sup> Doug. 441.

economy! But no. Individual rights are sufficiently secured by letting every man, according to his own will, follow his own pursuits, while public welfare forbids that combinations should be entered into for private benefit, by the persons concerned in any employment connected with the general welfare; in which combinations they would make common cause against the community at large; and in which the individual rights of those in the combining classes, who may wish to be industrious, are most grievously violated; because, if they were permitted to follow their pursuits, it would tend to relieve society from the extortions of the conspirators. These combinations are an infringement of that tacit compact which all classes reciprocally enter into, that when they have partitioned and distributed among them the different occupations conducive to general prosperity, they will pursue those occupations so as to contribute to the general happiness; and they are therefore at war with public policy. But when it is further considered that they are always accompanied with compulsory measures against those of the same class or trade, who would willingly pursue their occupation with industry and tranquillity, they are most tyrannical violations of private right, and [106] inevitably tend to the unjust impoverishment of multitudes, either of those against whom the confederacy is directed, or of those who are forced into it, or devoted by it, for exercising their own individual rights, and refusing to coöperate with the unlawful association.

The authorities already laid before the court cannot be strengthened by additional references. I shall, however, quote one more author, because his name and character are familiar to some of the persons indicted, who now hear me, and may therefore tend to convince

them that they have offended against the laws and policy which must be maintained in every well regulated state. The authority I allude to is M'Nally's *Justice of the Peace*.<sup>129</sup> "At common law, all confederacies and combinations wrongfully to prejudice any person, or the public, are offences punishable by indictment. Combinations among masters and workmen of various descriptions, have been productive of the most serious consequences to the trade and manufactures of Ireland, have been recognised as unlawful by the legislature, and are punishable by several acts of parliament. It is a melancholy truth that repeated combinations to regulate trade and advance wages, have raised the home manufactures to so enormous a price, that most articles, whether for use or ornament, are now imported from England or from Scotland, to the great impoverishment of this country, and to the ruin of the artificers themselves, who, from necessity, the result of their own illegal conduct, are forced to abandon their native land, the most productive in the world, where they might have lived in ease and plenty, to seek a precarious subsistence in Great Britain or America." In [107] this passage I freely acknowledge the writer has not set forth what are the most important causes of the languishing trade and manufactures of Ireland; he dare not do it, for they are connected with the jealousies and oppressions of its tyrant and its rival, and with the general misrule of that ill-fated land. But what he has set forth is so far true, that such combinations have impeded in that, and must in every country impede and interfere with its manufacturing prosperity.

Much has been said about the villanous judgment, as if by this prosecution it was intended to revive and

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<sup>129</sup> Vol. I. p. 383. tit. *Combination*.

enforce that horrible punishment; but the counsel on the other side well know that this is a groundless insinuation. The villanous judgment is now in every case obsolete; but according to the best authorities, it never could have been inflicted on such an offence as this, and most undoubtedly it never was. Hawkins<sup>180</sup> expresses his opinion that the villanous judgment could only be inflicted when a conspiracy was formed to accuse another of some matter which might touch his life; and he expressly says, the contrary has never been decided. Where the conspiracy is accompanied with the *crimen falsi*, it is subject to an infamous punishment, including pillory; and the person convicted is disqualified from giving evidence in a court of justice. But where the confederacy is unaccompanied with that crime, and is only calculated to prejudice a third person or the public, the punishment is merely fine and imprisonment, without any such disqualification or infamy. And permit me to observe, that the correctness of this gradation in the punishments, is calculated to wipe away the imputations of folly and injustice, which have been very improperly cast upon our common law.

[108] I now proceed to the examination of the more particular and technical objections to this indictment, which I do under great disadvantage, as business in another court unfortunately detained me there during the greater part of the argument of my learned adversary, who chiefly occupied this ground, a circumstance which I doubly regret both on account of the professional information I should have acquired had I been present, and because it disqualifies me from meeting his arguments with the precision they doubtless deserve and require. The District Attorney has,

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<sup>180</sup> *P. C. p. 2. s. 1. c. 72. b. 9. p. 125.*

however, discussed those objections with so much force and learning, that I shall feel myself justified in being very brief. There is a general remark, which, as it seems to me, renders every other nearly unnecessary: this motion cannot succeed if there be any one count good; and there are some of the counts on which I presume the court can entertain no doubt — indeed all of them have been drawn conformably to the most approved precedents. The fifth and ninth are verbatim, according to the precedent in *Rex v. Eccles*,<sup>181</sup> which the Court of King's Bench in England held good on motion in arrest of judgment; and the third count has every formal requisite that was ever contended for, and can only be questioned on the general principles, that have been, I hope, refuted. Objections, however, are in fact taken to every count, and they all flow more or less directly from the general proposition with which that gentleman commenced his argument; that every unlawful conspiracy (that is, I presume, every indictable conspiracy) must be to do an unlawful act, and the unlawful act must appear such on the face [109] of the indictment. This proposition, however, is not correct, if by the expression "to do an unlawful act" is meant to effect an unlawful purpose. East, in the passage I have already cited,<sup>182</sup> says, an indictment lies wherever either the conspiracy is entered into for a corrupt and illegal purpose, or from the use of unlawful means, to effect a legal purpose, although such purpose be not effected. But even this position does not appear, according to some authorities, sufficiently accurate; for the very act of conspiracy is held to be itself unlawful, and the entering into it is using unlawful means to effect a purpose, and is therefore punishable whether

<sup>181</sup> *Dog. C. C. Ass.* p. 123. note.

<sup>182</sup> *East's Crown Law*, 462.

that purpose be lawful or not. This doctrine is expressly laid down in the case so often and disrespectfully alluded to by the opposite counsel, that of *The King v. The Journeymen Taylors of Cambridge*.<sup>133</sup> "A conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it." In the same book, p. 321. the proposition is a little more qualified, though substantially the same: "a bare conspiracy to do a lawful act to an unlawful end, is a crime, though no act be done in consequence thereof." The position, however, in its fullest extent, is recognised in the case already cited of *Rex v. Eccles*.<sup>134</sup> "Conspiracy is the gist of the charge; and even to do a thing which is lawful in itself, by conspiracy, is unlawful." Taking the position of East, or either of those in 8 *Mod.* to be correct, the indictment is free from the objections urged against it on this ground; for the end to be accomplished in the 1st, 2d, 3d, 6th, 7th, and 8th counts, unlawfully and unjustly [110] to extort great sums of money by means of forming and uniting themselves into an unlawful combination, and of making unlawful and arbitrary by-laws for the government of themselves and other workmen in the same trade, is most obviously unlawful; and the end to be accomplished as stated in the fourth and fifth counts, unjustly and unlawfully to impoverish Edward Whittess, and to hinder him from exercising the trade of a cordwainer, as well as that set forth in the ninth count, by indirect means to impoverish the master shoemakers therein named, are, as I think, equally unlawful. Indeed it appears to me that they even fall within the rule laid down by the learned counsel him-

<sup>133</sup> 8 *Mod.* 11.

<sup>134</sup> *Dog. C. C. Ass.* 123, 124.

self, and that a conspiracy to accomplish any of those purposes, is one to do an unlawful act, and that the unlawful act sufficiently appears on the face of the indictment.

It is also objected to all the counts but the third and fourth, that they contain no overt acts. The attorney for the district has sufficiently answered this, and the multitude of precedents and cases he has produced, must be considered as conclusive. But if it be true as laid down in 27 *Ass.* 44, 9 *Co.* 56. b, 1 *Lev.* 126, 1 *Salk.* 174, 8 *Mod.* 321, and in a multitude of other places, that bare conspiracy is punishable without any thing having been put in use in consequence of it, or any overt act done, it surely cannot be required to set forth in the indictment an overt act, when one may not have been committed, and when its existence is not necessary to the completion of the crime. At all events, as is laid down in all those places, as well as in *The King v. Eccles*, conspiracy is the gist of the crime, the overt act is only matter of evidence, and it is clearly settled in the case of *The King [III] v. Horne*,<sup>185</sup> that whatever circumstances are necessary, to constitute the crime imputed, must be set out; but that any thing beyond that is surplusage and unnecessary. In high treason, indeed, from the nature of the offence, and for the benefit of the party accused, it is expressly enacted, that the overt acts, or in other words, that the nature of the evidence shall be set forth in the indictment; but that is an exception from the general rules of pleading, and need not be adopted in any other case.

To the fifth and ninth counts it is also objected, that the means of impoverishing Whittess, or the masters, are not set forth, but expressed in the vague terms by indirect means. This has been decided in England to

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<sup>185</sup> Cowp. 683.

be sufficient in the case so often alluded to, of *The King v. Eccles*,<sup>186</sup> on the principle I have just laid down; "but the court held that it is not necessary to set out the means; the means of the conspiracy are evidence; conspiracy is the gist of the charge." The bare conspiracy being a crime, let us suppose that in fact the thing agreed upon in such a conspiracy was to impoverish a person by indirect means, the detail of which had not been matured or settled; and that the very words, "indirect means" had been used in the agreement entered into, how should this crime be stated in the indictment, but according to the truth of what took place? And how can the gentleman say on this motion, but that what I have stated is the very fact we shall prove? The learned counsel, however, in support of his objection, relies on *The King v. Mason*,<sup>187</sup> that an indictment, charging the defendant with obtaining money on false pretences is insufficient, if it do not show what the false pretences are.

[112] The distinction between the two cases is, after a moment's consideration, obvious. To obtain money by a mere lie, is not indictable, as "lend me some money; I want to pay a debt for which I am dunned," when no such debt or dunning had any existence in fact. There must be fraud or cheating, as well as falsehood in the pretence. The nature of the pretence then enters as an ingredient into the formation of the offence, or (to use the words of Mr. Marryatt, in his argument for the defendant in the case cited) "the pretence is of the very essence of the crime, and constitutes the offence." The specific pretence must therefore be spread on the record, that the court by inspection may judge

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<sup>186</sup> Dog. C. C. Ass. 123.

<sup>187</sup> 2 D. & E. 581.

whether it be such as constitutes an offence. In conspiracy, on the contrary, the means do not constitute the offence; that consists in the conspiracy independently of them. They then are only matter of evidence, which therefore need not be set forth; but the false pretences are of the gist of the crime, and therefore must be specifically stated. . . .

[Here follows a statement of the proper procedure in quashing indictments.]

[113]. . . SAMPSON, in reply. In this unnatural effort to sustain monopoly on pretence of putting down monopoly, and supporting an accusation upon principles that establish guilt in the accusers, the learned counsel have put on an air of confidence, which shows that nothing can dismay their courage. My learned countryman seems to exult in the authority of his great reputation, like a giant about to run his course. But in a cause strong as ours is, I fear him not, though armed but with a pebble from the brook. [114] However great the influence of his well-earned fame and zealous countenance, it is all but show, but shadow against substance. I might apply to him what the sententious poet<sup>188</sup> said of the great Pompey, "*stat magni nominis umbra.*" I might remind him, that on the eve of his defeat, Pompey the great did crown his brows with boasting laurels, and hung his tent with gaudy wreaths of triumph. If I were at that happy time of life, when I could go to school, I should be proud to take my lessons from my learned friend; but not such lessons as he gives us now in favour of his clients; because, I know that were he in my place, he would give better reasons, and better arguments, the other way.

<sup>188</sup> Lucan.

He and his learned colleague, have arraigned me for rashly censuring the sublime sources of their common law. I have, it seems, blasphemed the temples of bare-footed Druids, in arguing here for working shoemakers. I have not treated with becoming reverence, the trial by the corsned, wherein the life of man, his guilt, his innocence, were made to turn on his salival glands; and he was only innocent who could best masticate and swallow a lump of dough,<sup>139</sup> and not be choked with it. I have spoken disrespectfully of trial by the holy cross, a game not half so fair as blindman's buff, on the success of which, death and eternal infamy awaited. I have not revered that trial by hired bruisers, who, by thumps of sand [115] bags were to try whose cause was holiest in the sight of God, where he alone was justified from violence and malice, whose champion thumped his enemy to death, or till he cried out craven: or he who could endure such thumping from sun rise to sun set, and not cry craven: that also proved the innocence of him who hired the body to be thumped. I have not spoken with religious awe of cudgel playing, that ancient mode of duelling by battel, when the lord or knight who had the broadest back and thickest skull, was sure to turn out the elect of God, and have his adversary hanged for being beat. And yet all this was common law, and that so much, that the good citizens of London were, by special charter, exempted from such process. Now, if what the learned counsel says

<sup>139</sup> It was called *buccella diglutienda*, and was of bread or cheese. For more information touching this barbarous superstition, see Spelm. *Gloss.* 439. The form of administering this morsel by the priest, was thus: We beseech thee, O Lord, that he who is guilty of this theft, when the exorcised bread is offered to him to discover the truth, that his jaws may be shut, his throat so narrow that he may not swallow, and that he may cast it out of his mouth, and not eat it. This old form called *exorcismus panis hordeacei vel casei* is in *Lindenbrogius*, p. 107.

be true, that all this common law rests only in abeyance – may be revived and visited upon us whenever the occasion offers – then he should quit his books and learn the cudgel. He cannot tell how soon he may be called upon, for all of it may not be yet so formally abolished as not to be again revived, seeing two centuries of nonuser is not sufficient evidence to show it is not law.

I have spoken rashly of that *judicium dei*, called the ordeal; where guilt or innocence was proved according to the rank of the accused, by fire or water, in person or by deputy-persons of high condition, judged innocent if they could hold three pounds of red hot iron in their hands, or walk barefoot and blind fold over nine red hot plough shares.

I have made too free with that most righteous trial, where for small offences, the hand was plunged in boiling water; for capital ones, the arm up to the shoulder; that is to say, where a fore quarter of the man was boiled to try the fact, whether the rest was good; when he whose flesh [116] could not resist the boiling caldron, was put to death. Of these and all such things, I have spoken too disrespectfully; because these sublime doctrines are to be found not only in the laws of Ina, the *Mirror*, and in Bracton, but in more modern works laid down as law. I know it well, so late as in the reign of John, some grants are to be found to bishops and to clergy of this sacred right of boiling and roasting Englishmen, granted by the name of the *judicium ferri atque ignis*.<sup>140</sup>

Now if the argument be true, that common law, however obsolete, may, when occasion offers to call it from its slumbering holes, be here revived, why not

<sup>140</sup> Spelm. *Gloss.* 435.

revive it all. No part of it can be more obsolete, than the doctrine of indicting men for trying to get wages in this free country. It is more than obsolete, it never yet was done at any period of our history, and it is worse than useless to do it now. It is asked, have I digested any better code. Truly I have digested none at all. On my admission to this bar, I took an oath, and took it with sincerity and truth, to uphold the laws and constitution of this country. I think I do my duty in upholding them against such doctrines, as would add to all the faults of youth, the dotage of old age. Perhaps, if I made laws, they would be foolish ones; but there are others who could make wiser ones. Not being called upon, I have made none. A man may speak of a defect which it is not his business to cure. I may see a disproportion of feature in a picture or a statue, and yet not be a painter or a sculptor. I may see when a leg or arm is broken, although I have not skill to set a bone. Though I prefer our laws to every other, I do not, therefore, think them like those of Providence, but I think [117] them great improvements upon the common law, said to be so like that system. This surely is extolling them enough. I stand entirely upon the laws of this our country and the wise decisions of our own courts. I ask for nothing more than that our own judges be free to exercise their wisdom and intelligence, and be as little trammelled as may be with antique perversity. I wish to see their judgments shine as lights to other nations. If foreign tribunals be too self-sufficient or too ignorant to quote them as authority, I esteem them not the less for that. I will refer to our reported cases, and ask which are those that put our jurisprudence in the most exalted point of view, those liberal and reasoned adjudications

on commercial and maritime contracts; those turning upon the general laws of nature and nations, and of natural justice, when our judges have borrowed their purer lights, not from Druids nor Monks, nor from the northern hive, but from the edicts of wise princes, from the matured codes of intelligent and enlightened people, the writings of learned and philosophical authors, from general principles of acknowledged right. Not from those crude antiquities which I am blamed for censuring, but after which, some learned gentlemen will seem to yearn. If our judges had once pronounced that such indictments as the present could be supported by virtue of the common law of England, I should then give my opinions with more measure; but at present I have their universal silence in my favour, and, therefore, I speak boldly. The various authors cited by the gentlemen, touching the passages in Hawkins so much relied upon, I have examined, and hope successfully to show their true signification. I do not think our adversaries have given a sufficient answer to overthrow the plain interpretation I have given them. I still rely on the original [118] authors for the construction I have made, and to show that the true sense has been corrupted and misunderstood. By reference to Rolle's *Abridgment*, I trust I have shown, that Hawkins could not mean that strange assertion, that there was no difference between a combination to do good and bad, between an honest combination and a false conspiracy to do a wicked crime. And touching combinations to impoverish by indirect means, without showing any thing unlawful in the means: besides that common sense is shocked by such a doctrine. I flatter myself the explanation I have given, will be agreeable to this honourable court, as rescuing the law which it

administers, from the reproach of folly and injustice. The gentlemen have quoted a number of authorities, most of which we cited. They endeavoured to strengthen their case by multiplying references; but I refer the court once more to those authorities, and I repeat what I have said before, that in the ancient writers nothing can be found to warrant such positions, and that the modern authorities are nothing more than echoes of one single error; for whether it be annotations upon Hawkins, commentaries upon the *Commentaries*, the *Crown Circuit Companion*, the *Crown Circuit Assistant*, Wilson's *Lecturers*, Wentworth's *Pleadings*, Burn's *Justice*, or M'Nally, or East, or any of them, they are all founded on, and all refer to, that miserable book, that *alias dictus*, which the learned counsel has scarcely ventured to defend, which the King's Bench and that learned reporter Sir James Burrow, have justly stigmatized, and which I say ought to be weeded out of our libraries as a very rank weed which scatters its bad seeds, and has already overrun the soil and choked all reason. This is the evil of all paradoxes, their strangeness captivates attention, and having the attraction of the marvellous, they are seized [119] upon as curiosities, and preferred by the idle and affected, to things more simple, and more solid, more true and profitable. The gentlemen in their rounds of references, have driven us, as Tony Lumpkin drove his dear Mamma, so many turns round Crackskull Common, still never quitting the point he started from.

I have said that all the conspiracies mentioned in the books, unless those in the "miserable bad book,"<sup>141</sup> or those erroneous sayings derived from it, turn upon the evils expressed in the declaratory laws touching

<sup>141</sup> 8 *Mod.*

maintenance, champerty, or false conspiracy. I do not think the cases relied on though taken in their full extent and latitude, show any thing to the contrary. Two of the three cases cited by Hawkins as instances, being false conspiracies, show this explicitly viz. "falsely to indict a man, or to charge a man with a bastard;" and Hawkins refers to conspiracies only, which are infamous, and such as subject the criminal, if not to the villanous judgment, at least to infamous punishment, as pillory and branding; so that, unless the counsel will maintain, that our poor honest journeymen are worthy to be pilloried or branded for not working with Edward Whittess, (who had first entered into their society and then separated from them,) the authority of Hawkins, proves for them less than nothing. The third case which Hawkins cites, is then the only remaining stay-rope of their arguments, and it would be piteous to adopt such a case as an authority. For unless we had tub-women or tubmen, excisemen and excise houses, and above all, a king who had a revenue of £180,000 sterling of duties upon small beer, we can scarcely view it as a case in point. It is *sui generis*, and anomalous. The variety of opinions [120] amongst the judges who ruled it, the irregular finding of the jury, and the peculiar reasons assigned, viz. that the impoverishing the excisemen, "tend to the public," and affected the king's revenue, all these considerations show that it has no affinity with any other cases under the English laws, and certainly it bears in no shape upon the dispute between our journeymen shoemakers here in this city of New-York, and their employers, nor shows in any shape which of the two contending parties is most to blame, or whether either of them. The present is a contestation where one side endeavours to

get as much wages for lawful labour as it can; the other, to get as much labour for as little money as it can. And again I would advise all who take part in politics or in elections in this country, to beware; for if it be the law that all confederacies, whether the object of them be good or bad, are common law conspiracies, what man is innocent that ever went to an election, or gave a vote, with others of his party, for governor or president. I have shown that nothing in the English law, repugnant to our constitution, or our statutes, can be law, and I have argued that this prosecution is repugnant to our constitution, because it is founded on the doctrine of unequal rights: and that it is repugnant to our statute, which defines conspiracy in terms so express, that both the learned gentlemen have chosen rather to be silent on that head, than to attempt an answer. They affect to speak as though they had not heard us mention that statute, which is of more importance to this case, of more imperative authority within this city, and this state, than all the laws of England, and of all the universe besides.

To show that inconvenient English laws were not enforced even when this country was a colony, I have cited the sound theory of Judge Tucker, and also the case of the [121] two presbyterian clergymen, from Smith's *New-York*. There is indeed in the close of that same history an account of a dispute touching the erecting a court of equity, by the legislative power of the colony, with the opinion of Mr. John Randolph of Virginia, who censures the blindness of the New-York lawyers in following a common error, that the statutes of England were in force here. "If we wade into the statutes," he says, "no man can tell what the law is; it is certain all of them cannot bind, and to know

which, was always above my capacity." Now, Sir, John said right in that, but even he, with all his wisdom, would have given to the blind lawyers of New-York a very curious code: for if the statutes of England were none of them binding, and the common law was their only rule, most strange results would follow. Lands would have been still unalienable by deed or will; they would still be burthened with the feudal tenures and all their evils; they would have had courts of chivalry, knight service, and villenage, with grand and petty sergeantry, aids, wardships, primer seisins and relief, and all the feudal tenures and their incidents, which at the restoration of king Charles were abolished by a single statute. My object in reviewing these antiquities was to show them absurd and unfit for our consideration. And further also, that even by the common law the present indictment could not be sustained, not even in England. The authority of Hawkins, I am willing to admit, is great, where it applies, and is not misrepresented; but, as Lord Mansfield said in speaking of Sir William Blackstone, it is not always safe to trust great names too far, for such will often be in contradiction with each other; for instance, Lord Coke makes the acquittal of the party accused by false conspiracy a requisite [122] towards indicting the conspirators, but Hawkins, in the book and chapter cited, lays down the law as generally applicable to all conspiracies, whether they be executed or not; in which last case there could be neither trial or acquittal. "Who shall decide when doctors disagree?"

Let us then give to Hawkins the only rational construction his words will bear, and there will be not merely one difficulty less, but none at all. And if any cases have, through mistake of that authority, en-

croached upon the ancient common law, let them too go for nothing. The reason given in old books why courts of justice have refused to quash indictments for conspiracy, helps out our argument materially, and makes against our adversaries; that is, the "enormity of the offence," which is compared by the old authors to the corrupt forswearing of jurors. And this being universally extended to all conspiracies, what can more strongly show that by the ancient common law, none were indicted for conspiracy, but those who had been guilty of some enormous falsehood and corruption. The penal code in England, has, from time to time, become more penal, and is more sanguinary at this day than any in the world: ours is tempered by a milder scale, and it is all the better, as is proved by this, that fewer crimes of deep atrocity are committed here, than in England. If English statutes have made conspiracies of innocent acts, must we therefore, who have no statutes of the kind, proceed as if we had? If English judges extend the spirit of those statutes to cases not within them, must our judges stoop from their dignity to follow them? What shows that in the highest of all offences indictments may be quashed, is, that before the statute of William & Mary,<sup>142</sup> they were [123] quashed for such slight exceptions as misreciting, misspelling or bad latin, even in high treason: and since that statute, they may be quashed, provided the exception be well and timely taken in the court where the trial is to be, and before any evidence be given on the indictment.

One of the counsel cited a case from Blackstone's *Reports*,<sup>143</sup> to show that the facts of conspiracy might be collected from collateral circumstances. That I

<sup>142</sup> *Stat.* 7. cap. 3.

<sup>143</sup> 1 *Blac. Rep.* 392.

take to relate to the question of proof, but to have no relation to the sufficiency of the indictment, upon which the court are to decide, and that upon the face of it.

Mr. Riker cited Hume's *History of England*,<sup>144</sup> touching conquered and ceded countries; it does not in any shape affect or alter the view we have already taken of the subject, being the same doctrine we ourselves adopt.

The argument from the assembly journals,<sup>145</sup> that courts of justice were appointed in the colony, with the same powers as those in England, may be answered by the arguments I have referred to, touching the appointment of an exchequer.<sup>146</sup> The same counsel argued, that, by our constitution, the common law was all adopted, except what was expressly, and I understood him to mean particularly, excepted. I think the exception much more general, for all that is repugnant to the constitution then established on the broadest basis of equal rights, was excepted; and equal rights there cannot be, if these men can be prosecuted by a combination of their employers, merely because they meet and determine not to work with them for the wages they are pleased to give. And we have heard of no case of conspiracy at common law, where the combination was merely not to do what no law made it obligatory to do – most certainly there can be none.

[124] The numerous references of the learned gentlemen, mean no more than what a merchant does when he draws his bills per duplicata, triplicata, quadruplicata, and so on, they being all referable to one single case, and that, in point of credit, no better than a blank endorsement. What is it all but pouring from vial

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<sup>144</sup> C. 64. p. 432.

<sup>145</sup> 1 *Jour. Ass.* p. 5.

<sup>146</sup> Smith's *New-York, ad finem.*

into vial, unless it be that they have shaken the bottle and raised up all the dregs that had precipitated to the bottom.

The District Attorney-General, has vouched the Emperor Zeno; he might as well have called upon all the twelve Cæsars, with their diadems upon their heads, for any thing we have to do with either king or Kayser. He says we have lived so happily under the common law, that we ought never to depart from it. He argues from the declaration of independence, that the people's chief complaint was, that they had been deprived of the best benefits and blessings of the common law! To be deprived of the law's benefits might be a very just complaint, and yet that law might need a great reform. The revolution which changed the entire form of government, from monarchy, the soul of common law, to a republic, which was a stranger to it, shows the sense of the whole nation upon that head, more strongly than words can. There are, besides, set forms and modes of speech which habit sanctions and which suit themselves to times and circumstances, but which are never taken at the letter. In England, in Scotland, and in Ireland, I have often heard such phrases, which meant nothing. I have heard men talk of restoring the constitution to its original purity, but no man ever fixed the epoch of that purity. All these are words of form and custom. The Cock-lane ghost gives us no apprehensions; we admit, the ghost could never kill nor put in jeopardy the living man; but then there was a false conspiracy, falsely to impute the [125] crime of murder, by making it believed that the ghost of the deceased haunted the murderer's house. That was an overt act of false conspiracy to charge or to impute to an innocent man the heinous crime of murder. There

was there that tinge of falsehood, fraud, and malice, without which by the common law there could be no indictable conspiracy. The King *v.* Eccles<sup>147</sup> was cited to show that overt acts need not be set out, because the conspiracy is the gist of the indictment, and the means are but the evidence, which need not be set out. I answer, that being a statutable offence, the description is technical, and if it be brought by averments within the statutory description it is sufficient. The other precedents in the same book touching conspiracies, not to work but at certain rates, or at the usual rates, are evidently referable to the statutes of labourers; and the very term usual rates comes from the first statutes, occasioned by the plague, when the labourers were limited to the wages "usual in the four last years." The instance of barratry relied on by the counsel, is stronger still for us, for there he says, that the overt acts are never set out. True, but I ask him for what reason are they not? Because the term being technical, "communis barrator," no other would suffice. By that alone, the offence can be described, and seeing that the cases of barrators and common scolds are laid down as exceptions, they prove the rule, that in all other cases the overt acts must be set out, both that the court may see what the offence is, or whether it be any, and that the party may know for what he is to answer, and be prepared to defend himself against it. Now, as common scolds and common barrators could not be punished for any particular [126] act, but merely for their general disturbance, it would be idle to set out particulars when the offence is general. The defendants there have notice that their general character is put in issue, and if they can disprove the charge of being common scolds

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<sup>147</sup> *C. C. Ass.* p. 123.

or common barrators, no more is requisite. Yet on trials for barratry, the learned counsel know that it is now the settled practice not to let the prosecutor go into the trial, without first giving the defendant a note of the particular matters which he intends to prove against him; for otherwise, it is justly said, it would be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances of which the indictment furnishes no notice. This substantiates the objection of my learned colleague, that the precedents cited against us, particularly in 4 Wentworth,<sup>148</sup> although of a technical and statutable offence, do minutely set out the overt act, and describe the offence with great certainty, although, perhaps, in that case scarcely necessary; but here, where the indirect means ought to be undoubtedly specified, they are not. Those cited from the same volume<sup>149</sup> are, undoubtedly, also offences made by statute. That against the carriers can be nothing else, though it concludes, for the reasons given, at common law. This wonderful compilation of the learned Mr. Wentworth, with all its labyrinths of indexes and apologetic prefaces, in which the author seems to accuse the dulness of mankind, for not comprehending his methods and his meanings, and which has caused more nervous head-aches, than tobacco or strong drink, is called a very high authority. [127] Pile the ten volumes upon one and another, like "Pelion upon Ossa," it is breast high, but otherwise it is no higher than the sun after he sets and leaves the world in darkness. Call it deep, or call it dark, but never call it high. My learned friend has argued that the common law is always in abeyance, and

<sup>148</sup> 5 *Mod.* 18. 1 Lord Ray. 490. 12 *Mod.* 516. 2 *Atk.* 340. 1 *Hawk. P. C. c.* 81. s. 13. and *vide* 4 *Went.* p. 100.

<sup>149</sup> 4 *Went.* p. 113. 120.

that, whenever it chooses to make an excursion from England, and pay us a visitation, it is entitled to the honours of the sitting, and the rights of citizenship in *secula seculorum*; if so, it is like the sword of Democles, hanging over our heads, and we had better reconcile ourselves to heaven betimes, for we can never say when it may fall upon us. He says Hawkins is never wrong; I have shown an instance where he and the great Lord Coke are in opposition. One must be in the wrong. I give the counsel his choice, *utrum lorum*? The case he has cited from East's *Crown Law*,<sup>150</sup> is conculsive for us and not for him; particularly when taken with the contents of the whole chapter of which it makes a part. The title of that chapter is, "Forcible or fraudulent abduction, marriage or defilement." Now this classification alone shows the meaning of this intelligent and experienced writer: and the circumspection with which he travels over the ground where others have gone astray, is a fresh proof of his ability and his good sense. He shows how, in an indictment for a conspiracy to marry a pauper, Judge Buller held it essential that there should have been corrupt solicitations. In that case, too, there was such perversion of all principles of justice, law, religion, and morality, that, if it did not entirely fall within the definition of false conspiracy, it fell within the reason and principles. But how unlike is that to the case of men contending for their undisputed [128] right of selling their labour for the best price they can. How can that be a false conspiracy? And if it be not a false conspiracy, it is no conspiracy at common law.

But the learned counsel denied my position, that nothing was held conspiracy by the common law, that

<sup>150</sup> 1 East's C. L. 462.

was not *crimen falsi*, and he cited some cases to disprove, which, I think, prove it: for although they are among those modern cases, which have been more loosely decided than the ancient, and may not exactly and entirely fall under the definition of maintenance, or false conspiracy, or champerty, yet that they sound in fraud, deceit, and corruption is most undeniable, and in that differ utterly from the case in hand. They are perversions of justice and right, for corrupt and dishonest purposes. The present case has no tincture of fraud, deceit or corruption, whatsoever, nor is it tending to any act which any law or statute has made criminal. The case of Sir Francis Blake Delaval, was, as the counsel himself has stated, a confederacy to have Miss Cately assigned (she being then an apprentice) for the purposes of prostitution – a horrible perversion of morals, law, and religion. Does it follow, because such an offence was punished as conspiracy, that shoemakers who meet to demand wages for labour, and whose utmost malice goes no further than a determination not to work for those that undervalue their honest industry – Is it possible to place my argument in a stronger light than by the opposition of these two cases?

The learned gentlemen cited *The King v. Cope*<sup>151</sup> to the same effect, and to it I gave the same answer. The charge was that of hiring a person to put grease into the [129] paste of the king's card maker, in order to spoil the cards, and impoverish, by such indirect or unlawful means, the manufacturer. Does this case show that I was wrong in saying that all conspiracies at common law must be infected with the *crimen falsi*? But since our declaratory statute, I do not think either of these offences could be indicted here as conspiracies; because

<sup>151</sup> Strange, 144.

it must be something very heinous to amount to a conspiracy, which, as our statute shows full clearly, differs from all other prosecutions in this, that the intention is punished, though the crime be no otherwise effected, than by the mere determination to commit it. If, indeed, the acts were excuted, I think they would be clearly indictable, even here, though bare conspiracy to do them would not, because we have a positive statute defining conspiracy, and they come not within it.

The counsel argued further from Hawkins,<sup>152</sup> that for conspiracies to impoverish a certain set of lawful traders, an information would lie in England: and in an anonymous case, an information was granted against button makers for combining by covenants not to sell under a set rate, and Holt, C. J. said, "it is fit that confederacies by those of a trade to raise their rates should be suppressed." This is all answered by what we have already so often said; that in England there are statutes against such confederacies, which statutes fix the rates; and to combine, and that by sealed covenants against the positive and declared law of the land, was manifestly indictable. Being indictable, the Court of King's Bench take upon themselves to grant an information, a practice, however, that our constitution prohibits, so different is the genius of our laws. The case [130] of the brewers is also relied on very principally by my learned friend, to support the meaning given (as we maintain erroneously) to the text of Hawkins. I answer, its juxtaposition alone, is an argument that it was for some reason considered by Hawkins, or those from whom he copied, as a false conspiracy, founded in oppression or corrupt maintenance of each other, through right and wrong. It is a case in which the judges

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<sup>152</sup> B. 2. c. 26. vol. 4. p. 85.

seemed much perplexed, and by no means agreeing with, or among themselves; but Hawkins was then treating specifically, of false and malicious conspiracies against public justice, and therefore must have meant to class that case amongst them, as appears from the whole of the cases he cites, and their context. It is besides a case so extraordinary and so anomalous, that I do not think it necessary to argue upon it one way or other.

I had the good fortune, in citing the work entitled "*Bolton's Justice*,"<sup>153</sup> to have the sanction of my learned friend, who certifies the merit of that book. He has himself relied upon it strongly. It certainly contains both principles and precedents of great antiquity, and curiosity. I quoted it for a purpose quite different from that of my friend. I will again recur to it, to show that much of what was there laid down and held good law, would now with us be shocking to humanity. I shall read one only of the many precedents of impeachments and convictions which this valuable treatise contains; it may serve as a sample of the whole. The English title given to this precedent,<sup>154</sup> which itself appears to be a transcript of a record, and is in Latin, is thus:

[Counsel cited from Bolton's *Justice*, 129, an indictment against one S.B. for bewitching a horse, to illustrate the inapplicability of the English common law to American conditions.]

[132]. . . Now, will this honourable and enlightened Court for the first time, institute in this country, an unprecedented prosecution, in compliance with such a book of precedents; or, is it possible to look but with distrust upon precedents, drawn from such sources?

My learned antagonist has, in his zeal for his clients,

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<sup>153</sup> Written by Sir Richard Bolton, and published in 1683.

<sup>154</sup> Bolton's *Justice*, 170.

cited M'Nally's *Justice of the Peace*, which is like the rest [133] of all these compilations, a repetition of preceding ones. I should have great confidence in the work of an author so versed in the criminal law, as I know that gentleman to be; but I think my learned friend has cited the very worst part of his book, and that which does least credit to the author, and which is of all others the least congenial to the avowed sentiments of the counsel himself. From the passage he has read, it would appear, that the unhappy state of the Irish people was not so much owing to bad laws, oppressive institutions, and foreign government, as it is brought upon themselves by combinations of this nature. I confess I never expected to have had this question to discuss with my honourable friend. And without going further than the old tried authority he has cited, or even the modern one to which he has resorted, I could show him laws sufficient to account for calamity in any country, and against which charity and reason must ever be in active conspiracy. In Bolton's *Justice*, besides indictments for various kinds of sorcery practised upon man and beast, he may find indictments against men for not coming to the church<sup>155</sup> which they did not acknowledge, and quitting the worship of their fathers. Others against householders for living after the manner of their own country, and not after the English manner.<sup>156</sup> Another against a man for speaking his own vernacular language, and not commonly using to speak the English language.<sup>157</sup> Another for wearing Irish apparel,<sup>158</sup> and many others, so grotesque, so piteous, and so intolerable, that it certainly was going

<sup>155</sup> P. 157.

<sup>156</sup> P. 158.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

a little far to impute the misfortunes of the people of that oppressed country, to the combinations of journeymen. And I think, the clients can never repay with sufficient gratitude, the zeal of the [134] learned and honourable counsel that has carried him so far beyond himself. I think it, however, a duty to the fair and honest name of my friend, to make his apology; the more so, as I perceive he is not now present to explain for himself. . . .

[136] Touching the setting forth the overt acts, the counsel argued, that the exceptions in cases of treason, made by the statute to protect the subject against the abuse of power, are arguments, that, at common law, the overt acts were not required to be set out. I might readily admit all that, and our argument be in no wise shaken by it. I might admit, and, to be plain, I do admit, that a conspiracy to commit murder or treason, by any means whatsoever, is a guilty conspiracy, because, however much the humanity of the law will intend in favour of innocence, it cannot intend that men who combine to take away life, to betray their country, to rob, to accuse falsely, to defraud or extort, can be any other than wicked malicious and false conspirators. But before men can be judged false conspirators for refusing to work till they are requited, some overt acts should be shown sufficiently strong to afford the inference of so heinous a crime as conspiracy, which is punishable with infamy. For the very passage relied on in Hawkins, shows the conspiracy he treats of to be punishable with pillory and branding. Before such criminality shall be intended, the overt acts which constitute that crime should be made appear, as well to the jury and court, who are to pronounce and judge, as to the parties who are to answer, and who require

full notice in order that they may know against what they are to prepare their defence. Is there any thing more monstrous than to call upon men to show that they did not use indirect means, and yet not tell them till the moment of trial, perhaps till their accusation is concluded and they called upon to answer, what those indirect means were? Where shall men then find witnesses or proofs? Is it supposable that the whole community is present at all times in court and ready to answer for every body accused? If the indirect [137] means are the crime, they must not only be proved, but alleged. If they be alleged but not proved, the indictment fails; and as they cannot be proved unless they are first alleged, so it is a nullity if they be not alleged, for every proceeding must be *secundum allegata et probata*, and proof without allegation, is no better than allegation without proof. In either case the proceeding is a nullity. And where no criminal matter is alleged, the Court will then in justice quash the indictment, and not waste its time, which is the time of the public, nor oppress the parties, which is an oppression of the public, by forcing upon them the expense and vexation of a trial, which can evidently have no other fruit than oppression and vexation.

Suppose, says the counsel, the conspiracy was to effect the object by indirect means, and no particular means agreed upon, would not the Court intend, that indirect means generally must be unlawful means? This is answered by what I argued in opening, where I showed that indirect is nothing else in law phrase than unlawful; that is, *indirectum*. But is it enough to put a man to answer on peril of fine, imprisonment, pillory, branding and infamy, or one, or all of them, to allege that he has used indirect means, and not tell him what means

he is accused of using? As well might he be put upon his trial upon the idle formal allegation, that he was instigated by the devil, and had not the fear of God before his eyes, and driven to make out by evidence that he was not instigated by the devil, and that he had the fear of God before his eyes!

As to the case of *The King v. Linn*, which was a conspiracy to prevent the burial of the dead, it was an offence against religion, against civilization, against law. It was corrupt and a breach of the peace. Yet I do think, even that could hardly be punished, consistently with our statute, [138] as a conspiracy, however the acts when executed might be punished exemplarily in other forms; as riots, affrays, trespasses, breaches of the peace, &c. all of which are indictable *per se* when executed, but are not strictly of that complexion which would warrant an indictment merely for the intention, particularly under a criminal code milder by much than the English. Indeed the *Poulterers' case*, so much relied on, is conclusive for us upon that subject; for in the note at the conclusion of it, it particularizes with great care, those crimes which may be punished as conspiracies, although nothing be done further than the act of conspiracy. I shall once more repeat the express words. "*Nota reader.* These confederacies punishable by law, before executed ought to have four incidents. 1. It ought to be declared by some manner of prosecution. 2. It ought to be malicious, as for unjust revenge, &c. 3. It ought to be false, against an innocent. 4. It ought to be out of Court voluntarily." Now if the counsel who accuses me of looking only straight forward, would follow my example and look straight forward himself, I think he would see before his eyes, in every authority he has

quoted, enough to stop his course; but he chooses to turn his winkers before his eyes, and will see only sideways and obliquely. I wish he had given a direct answer, and shown how this indictment contains those "four incidents."

He cites a precedent of a proceeding against merchants, touching the rates of wool, and challenges us to show any statute on the subject prior to its date. I have answered him by laying open the index of Keble's *Statutes*, which teems with such ordinances, and therefore, his conclusion that the conspiracy in that case was not by virtue of a statute, but at common law, falls to the ground.

[139] The learned counsel derives from Hawkins three gradations of enormity in conspiracy, and which, he argues, are followed by corresponding punishment. 1st. Where the charge goes to the life; that is, where the conspiracy was by false accusation to take away the life of the victim, which he says is followed by the villanous judgment. 2d. Where there is fraud and deceit, there the punishment, if I understood him, is of an infamous nature, and subject to branding, pillory, &c. 3d. Where it wants these ingredients, then the punishment is fine and imprisonment.

To all this I answer, without binding myself to follow a definition which contradicts the declaratory statutes at once of England, and of our own state, that the third class must mean those conspiracies or combinations for wages which depend upon statutes that have not, nor never had, force here. And, therefore, as the present charge can, in this state, belong to none of his three classes, there is no need to reply to that classification. If the masters who prosecute here, be themselves indicted for conspiring to accuse, which is

strictly an indictable conspiracy; or for conspiring to impoverish the workmen by preventing their selling their labour; or for maintaining each other, right or wrong; or simply for conspiring to monopolize the labour of the poorer class; they may, perhaps, be punishable by the law they would enforce against us. But for the journeymen, they surely stand clear of every similar imputation; unless the Court could make laws which none but the legislature can do, and this enlightened and patriotic tribunal will never do what is beyond its province.

[140] The precedent produced by Mr. Colden, shows all it was cited for, that in the only record to be found of the kind, no conviction took place, or no judgment was given. I think, therefore, we had better be contented with the laws under which this country has so long enjoyed all its justly boasted prosperity, unless offences of this kind become enormous. Then let the legislature provide for them. When the great merchants engross the firing of the city, let that also be provided for, but let not industrious shoemakers be punished through the fear that Mr. Edgar, Mr. Lenox, Mr. Gracie, or Mr. Clason, or any of our men of wealth, may some day do an act which they never yet have done, and which I venture to say none of them ever will do.

If the butchers and bakers combine, the one not to kill, and the other not to bake; they, and not the community, will starve for that; for if we have a sheep, we will find somebody hardhearted enough to kill it; and if we have flour, we may have griddle-cakes; and if the evil requires a law we shall have a legislature to provide one in due time. But I think it somewhat too provident to suppose every thing that is possible,

and use that possibility as an argument for an oppressive and unprecedented accusation. The case concerning Macklin, the player, was also quoted from the *Crown Circuit Assistant*, as an indictable offence not created by statute, and yet not tinctured with the *crimen falsi*. It was, however, a conspiracy to breed a riot in Covent Garden Theatre, in order to force a meritorious actor and servant of the public off the stage, to deprive him, by such wicked conspiracy, of his bread, and was in the nature of that branch called maintenance, being a conspiracy amongst a number to maintain each other in a quarrel, and in what they all knew to be wrong. It [141] was malicious and oppressive, and not for any concern of their own, nor in furtherance of any just interest or claim by any legal means, and if it was not strictly a conspiracy at common law, it was as like it, as it is unlike to our case.

But once for all, I refer again to the statute of New-York, and intrench myself within it, and also to the evidence which negative usage furnishes, that this combination not to work, which is a mere non-feasance, and omission of what no law obliged us to do, is not indictable within this state at common law. That it is not by statute it is admitted; and otherwise than by statute or at common law, it cannot be.

The reporter and publisher join in expressing their regret, that they have not been able to give the able reply of Mr. Colden. It was submitted to him for his revisal, but during the great pressure of his business he mislaid it. The reporter after transcribing his notes had destroyed them, and the loss became irreparable.

The Court, when the argument was closed, conceived the cause of such importance as to require mature con-

sideration, and after paying a handsome compliment to the industry and ability of the counsel on both sides, deferred its opinion till the ensuing session.

On the next general sessions held in the month of February, the Honourable Dewitt Clinton, Mayor, being absent, the Aldermen who heard the motion not agreeing in [142] opinion, no judgment was given, and the defendants' recognisances to appear, &c. were continued over.

At the general sessions in the month of April, the Mayor went out of office, and was succeeded by the Honourable Jacob Radcliff; the latter not having heard the argument, declared himself incompetent to deliver an opinion, and the extensive calendar and the pressing necessity for delivering the city prison, made it impossible to allow time for a fresh argument.

The same difficulties occurred in the June sessions, and it was thought expedient to appoint a special sessions on the 12th July, for the final determination of the cause.

[143] TRIAL, &c.

On Thursday, the twelfth day of July, this cause came before the special sessions appointed by order of the corporation of the city and county of New-York, for its determination. Mr. Colden appeared, together with Mr. Sampson, as counsel for the defendants. Having argued the motion on their behalf before his appointment to the office of District-Attorney, Mr. C. did not think himself at liberty to act on their prosecution. Mr. Griffin was appointed in his place to prosecute, and Mr. Emmet was, as before, associate counsel on the part of the people.

The defendants' counsel finding that no judgment could be given on their former arguments, declined to

renew the motion for quashing the indictment. It had been proposed to submit the foregoing printed report of the motion, and the arguments upon it, after the manner, sometimes adopted by our Courts under a press of business, of receiving written arguments; but the delays of the press, the whole not being yet printed, and the consideration that one of the counsel (Mr. Griffin) had not been heard, and other reasons to the contrary presenting themselves, that mode was not adopted, and the motion being now waived, the defendants [144] who were under recognisances, appeared by their counsel, and pleaded not guilty.

On motion of Mr. Griffin, the following witnesses were bound in recognisance to appear from day to day and testify in the cause. Lewis Judson, Lucius Benjamin, Edward Whittess, Oliver H. Taylor, John Wilcox, Charles Aimes, Daniel Corwin, Benjamin Britain, Thomas M'Cready, Webby Slocum, William Frowd.

The jury precept contained twenty-four names of jurors, of whom only eighteen were summoned, the remainder being absent or not found. And of these there did not appear a sufficient number.

The following were the Jurors sworn: David Wagstaff, John Johnson, James Welsh, William L. Lawrence, August Nicoll, John Ashfield, David Cargill, *Who were on the panel.* John W. Livingston, William Brodill, Joseph Dederer, John Queen, Robert Graham, *Tales.*

As the jurors came to the book, they were asked by the defendants' counsel, whether they were master shoemakers, and also, whether they were masters or employers in any of the mechanic arts or trades; but none such appearing [145] they were all permitted to be sworn without further objection.

A question was put to a juror by Mr. Griffin, on be-

half of the prosecution, whether he had not made up his mind upon the subject of this trial. He said he had no knowledge of the particulars of this case and therefore could not have made up his mind. Upon this Mr. John Johnson, another of the jurors, observed, that he had so far made up his mind, that he could see no reason why journeymen should not meet to regulate their own demands, as well as other men. This declaration was made a ground of challenge for favour, by the prosecutors' counsel, and the three jurors first sworn, viz. James Welsh, John Ashfield, and David Cargil, were sworn, to try whether the said John Johnson was an indifferent juror between the parties or not.

David Codwise, Esq. counsellor at law, having been seated opposite the jury box, was called and sworn to testify to the words of Mr. Johnson. The prosecutors however withdrew the challenge and the juror was sworn.

Mr. Queen was also challenged, for favour, and examined on his *voire dire*. The ground of challenge to Mr. Queen was, that his brother, who was now absent from this city, had been, during his residence here, about six months ago a member of the Society of Journeymen Cordwainers, and that he might still be understood to be a member; if so, the penalties would fall upon him, provided the acts of that body, were held to amount to a conspiracy, and for that reason, his brother could not be an impartial juror. The same triors were sworn. Mr. Queen was examined on his *voire dire*. Two witnesses, Thomas Wilson and George Gould, were examined in chief. The counsel summed up [146] the evidence, and the triors found Mr. Queen an indifferent juror between the parties; he was accordingly sworn.

The court imposed fines on several persons sum-

moned as jurors, for their non-attendance, and adjourned the trial of the indictment till 10 o'clock on the following day.

The jury sworn were permitted to go at large by consent of the parties; the court first admonishing them of their duties, and of the necessity of shutting their ears to all conversations touching the subject they were sworn to determine upon.

Friday, 13th July, 1810. Present, The Hon. Jacob Radcliff, Esq. *mayor*, The Hon. J. O. Hoffman, Esq. *recorder*, Nicholas Fish, Esq. *alderman*—justices.

On the part of the prosecution, the counsel proceeded to prove the rules of the society by parol, having previously given notice to the defendants' counsel, to produce all books and papers of the society, and having proved the same to have been in the hands of Baker, one of the defendants, who was secretary of the society. The first witness, Benjamin, proved the rules as contained in their constitution printed in 1805, and afterwards re-enacted. He also testified to some additional by-laws or amendments. He could not say that the printed constitution now produced was a copy of the former, and the defendants' counsel at first objected to its being given in evidence, as such; but in the course of the examination thought proper to admit it, and it was read as follows.

[147] CONSTITUTION, &c.

We, the Journeymen Cordwainers of the City of New-York, impressed with a sense of our just rights, and to guard against the intrigues or artifices that may at any time be used by our employers to reduce our wages lower than what we deem an adequate reward

for our labour, have unanimously agreed to the following articles as the Constitution of our Society.

ARTICLE I. That this Society shall consist of a President, Secretary, and three Trustees, to be elected annually; and a Committee of six members, to be chosen every six months.

ARTICLE II. The election for President, Secretary and Trustees, shall take place on the third Monday in January, annually, at the usual place of meeting, and they shall be respectively chosen by ballot, by a plurality of votes of the members present; and the Committee shall be chosen the third Monday in January, and the third Monday in July.

ARTICLE III. The President, in order to preserve regularity and decorum, is authorized to fine any member six cents, that is not silent, when order is called for by him, and all members are to address the chair, one at a time.

ARTICLE IV. Any person becoming a member of this Society, shall pay the sum of forty-three and a half cents on his admission, and six and a quarter cents as his monthly contribution; [148] and should any member, leave the city at any time, and stay for the space of three months or upwards, if on his return it can be proved that he has been so absent, he shall still be deemed a lawful member, by paying one month's contribution.

ARTICLE V. All the money collected in this Society shall be delivered into the hands of the Trustees, and they shall hold an equal share till it amounts to fifty dollars; they shall then deposit it in the United States Bank, and it shall not be drawn on except in case of a stand out, and then left to a majority of the society.

ARTICLE VI. The secretary shall keep a regular account of all the proceedings of this Society, and he for his services, shall receive one dollar per month, and twelve and a half cents for each notice served on any member.

ARTICLE VII. The President, Secretary and Committee shall meet on the second Monday in each month, to consult and propose any measures they may think beneficial for the Society, who shall assemble on the third Monday in each month, at the hour of seven o'clock from September to March inclusive, and at the hour of eight o'clock from March to September, and for non-attendance of President and Secretary, to pay a fine of fifty cents, and any member of the Committee to pay a fine of twenty-five cents.

ARTICLE VIII. No member of this society shall work for an employer, that has any Journeyman Cordwainer, or his apprentice in his employment, that does not belong to this Society, unless the Journeyman come and join the same; and should any [149] member work on the seat with any person or persons that has not joined this society, and do not report the same to the President, the first meeting night after it comes to his knowledge, shall pay a fine of one dollar.

ARTICLE IX. If any employer should reduce his Journeyman's wages at any time, or should the said Journeyman find himself otherwise aggrieved, by reporting the same to the Committee at their next meeting, they shall lay the case before the society, who shall determine on what measures to take to redress the same.

ARTICLE X. The name of each member shall be regularly called over at every monthly meeting, and should any member be absent when his name has been called over three times successively, shall pay a fine of

twelve and a half cents for the first night, twenty-five cents for the second, and fifty cents for the third; and if absent three successive meeting nights, the Secretary shall deliver him a notice, and if he does not make his appearance after being notified, on the following meeting night, (unless he can assign some just cause for staying away,) shall pay a fine of three dollars.

ARTICLE XI. Any Journeyman Cordwainer, coming into this city, that does not come forward and join this society in the space of one month, (as soon as it is known,) he shall be notified by the Secretary, and for such notification he shall pay twelve and a half cents; and if he does not come forward and join the same on the second meeting of the society, after receiving the notice, shall pay a fine of three dollars.

ARTICLE XII. Any member of this society having an apprentice or apprentices, shall, when he or they become free, report the [150] same to the President, on the first monthly meeting following; and if the said apprentice or apprentices do not come forward and join the Society in the space of one month from the time of the report, shall be notified by the Secretary, and if he does not come forward within two months after receiving the notification, shall pay a fine of three dollars.

ARTICLE XIII. There shall be delivered to the President at every monthly meeting, a sufficient sum of money to defray the necessary expenses of this society.

ARTICLE XIV. If any member should be guilty of giving a brother member any abusive language in the society-room, during the hours of meeting, who might have been excluded from this society by his misdemeanor, but by making concession have been reunited, he shall pay a fine of twenty-five cents.

ARTICLE XV. Every member of the society shall

inform the Secretary of his place of residence, and should they at any time change their place of residence, they shall notify the same to the Secretary on the first monthly meeting following; not complying with this, shall pay a fine of twenty-five cents.

ARTICLE XVI. Any member may propose as amendments to this constitution, new articles, or alterations of those in force, which proposed amendments must be delivered to the Committee in writing, who shall present the same to the Society, at their next monthly meeting, and if two-thirds of the members present concur therein, such amendment shall become a part of the constitution.

[151] ARTICLE XVII. It is the duty of the private members to attend the meetings and coöperate with its officers in promoting the welfare of the society, for in doing this, they will recollect they are promoting their own individual welfare.

A LIST OF WAGES for the journeymen cordwainers in the city of New-York, agreed to on the First Day of March, 1805.

	Dols.	Cts.
Back Strap Boots, fair tops . . . . .	4	00
Back Strapping the top of do. . . . .	0	75
Ornament Straps closed outside on do. . . . .	0	25
Back Strap Bootees . . . . .	3	50
Wax Legs closed outside, plain counters, fair tops . . . . .	3	25
Cordovan Boots, fair tops . . . . .	3	00
Cordovan Bootees . . . . .	2	50
Suwarrow Boots, closed outside . . . . .	3	00
Do. inside closed, bespoke . . . . .	2	75
Do. do. inferior work, do. . . . .	2	50

	Dols.	Cts.
Binding Boots . . . . .	0	25
Stabbing do. . . . .	0	25
Footing Old Boots . . . . .	2	00
Foxing New Boots . . . . .	0	50
Foxing and Countering Old Boots . . . . .	2	00
Do. without Counters . . . . .	1	75
Shoes, best work . . . . .	1	12
Do. inferior work . . . . .	1	00
Pumps, French edges . . . . .	1	12
Do. Shouldered do. . . . .	1	00
Golo Shoes . . . . .	1	50
Stitching Rans . . . . .	0	75
Cork Soles . . . . .	0	50

[152] It was further proved, and not denied by the defendants, that on several occasions measures had been taken to give effect to their constitution, or rules, by giving notices to masters having journeymen or apprentices in their employ, not members of the body; viz. for having more than two apprentices, or employing apprentices other than those of the members of the society; also, for employing journeymen who had infringed their rules. The notice in such cases was, that if they persisted to employ such persons, &c. or to disregard the rules of the body, their shop should be deserted by all the workmen of the society. This had been in some instances effected by means of what they called a strike against the shop, and the offending member was then termed a scab, and wherever he was employed no others of the society were allowed to work. There was a strike against the shop of Corwin & Aimes, but as it appeared to the society that they contrived to defeat its operation by privately getting their work

done at other shops, the society, in November, 1809, ordered a general strike against the masters. There were one hundred and eighty-six members, and about as many journeymen who were not members, but all the best workmen were of the society. Benjamin who testified as to this general strike, said he never knew of but one general turn out. He testified that he had been fined and threatened for working against the rules of the society. He admitted on his cross-examination, that he came voluntarily into the society, and also, that on the question for a general turn out, the members voted by secret ballot, and that no compulsion is used, but every man votes according to his inclination, the majority carries it, and then it becomes a law, and the contraveners of it are scabbed. Edward Whittess had worked for Corwin & Aimes, about four [153] or five years, and had joined the society about six or seven years ago. He was fined at different times, and at the time of the general meeting there was a rumpus in the society, which, with the multiplicity of the fines, determined him to leave it, and change his occupation, and take to cramping boot legs. He had, while a member, acted as sexton of a church, for which he had sixty dollars yearly. This prevented his attendance and occasioned him sometimes to be fined. During the time he was first scabbed, his employer was obliged to discharge him until he paid his fine and was reinstated. He admitted that he came voluntarily into the society, and remained in it six or seven years.

Mr. Aimes proved that he had received several notices, one to discharge Whittess, which he complied with; another to discharge a boy, an apprentice of Britton, who had worked with him two or three years. Witness thought it a great hardship that the old man should lose the profit of the work of the apprentice he had

instructed and did not discharge him, for which the body struck against him. On cross-examination he admitted he had contributed some money towards carrying on this prosecution.

James Britton confirmed this testimony, and said, that after he had instructed his apprentice, whose work was his chief support, (he himself being in years,) he was deprived of that help by the influence of the body of which he was not a member.

Thomas Lewis was also examined; his evidence was not very material, being only confirmatory of the above particulars.

The defendants offered to show, as well from the witnesses on the part of the prosecution, as from other witnesses whom they should call,

[154] 1st. That long ago, prior to the strike or turn out, there was a combination of the masters for the express purpose of lowering the wages of the working men, and which was oppressive to them; and that their society originated in the necessity of protecting themselves against such combinations; and further, that the masters were now in combination for the purpose of this prosecution.

This was objected to and overruled, upon the ground that the misconduct of the masters would be no justification of the defendants. It was then offered as evidence in mitigation, but the Court said, that if there were circumstances merely in mitigation of the sentence, they would come more properly in affidavit in case of conviction.

2d. The defendants attempted to show, that the wages and rates contended for, and demanded by, the journeymen, were reasonable, and no higher than to afford them a bare maintenance.

This evidence was not received, because none had

appeared on the part of the prosecution, to show that unreasonable or extravagant demands had been made. It was therefore held irrelevant to rebut what had not been proved.

3d. The defendants proposed to prove, that the masters made an excessive profit on the labour of the workmen, but that was refused also, upon the former ground, that the misconduct of the masters would not justify a conspiracy or illegal combination in the journeymen.

Various discussions arose touching the admissibility and relevancy of evidence, how far the acts of one person should preclude others; how far, though the day laid in the indictment was not material, the prosecutor should still be confined to one single conspiracy under each count, and [155] having once fixed the period, be held to it, and prevented from wandering in evidence, so as to surprise and baffle the defence: the more so, as the conspiracy was here laid, not on divers days and times, but on a certain day. Some discussions also took place, touching the proof; how far the conspiracy should be first proved, before particular acts against individuals; and such other topics, as arise in every trial for conspiracy, from the complex and indefinite nature of the charge. All such points being of general application and not materially interwoven with the object of this report, are purposely omitted. They, however, necessarily consumed much time, and the evidence was not closed till eight or nine o'clock.

The Court having, in the morning, intimated, that it would sit till twelve o'clock, rather than adjourn, defendants' counsel were called upon to sum up, and Mr. Sampson, pursuant to arrangement with Mr. Colden, commenced. He observed, that the difficulties under which he laboured, were beyond his force, and that

he was conscious entering upon an argument of such a nature, under such disadvantages, was a forlorn endeavour. The evidence given, did not in any shape alter the principles upon which he had argued six months ago, for the quashing of the indictment. That argument was addressed to a court of law, and founded upon the law, supposing all the facts charged in the indictment to be proved. Nothing, certainly, had come out in evidence, to prejudice the defendants, for there was not a single instance of violence or disorderly conduct, and it was conceded, that the demands of the workmen were not unreasonable or extraordinary. The single question would be, as it was considered by him, whether the law of England was to govern this case. He was aware how far [156] the doctrines of the English law upon this head, had unfortunately given a bias to the judgment of many individuals; and no doubt, some of those whom chance had arrayed to sit in judgment on this cause, must be presumed, however honourable and intelligent, to have imbibed more or less of that opinion. The jury, it is true, are judges of law and fact in criminal cases, and the arguments necessary to disentangle the question from such preconceived notions, must be of a nature too prolix and arduous, to be offered with a fair prospect of success, to a jury already exhausted and fatigued by a painful sitting, at a season when the powers of mind and body languish. Mr. S. further observed, that in the former argument, he had found it necessary to turn over many volumes in order to show grounds for his opinions, and to cite numerous cases which it would be impossible now, at candle light, with sight so fatigued, and faculties so exhausted, and in a state of health so ill suited to exertion, to resort to. The very

circumstance of his having undertaken to report the former arguments, with all the tiresome labour of transcribing, compiling and correcting of the press, had effaced the livelier impressions of first conceptions, and must impart to what he should offer the vapid insipidity of a tale twice told. The many books already referred to, and now produced by the opposite counsel, seemed to forewarn him that they meant to renew the learned efforts of the former contest, and many of them referred to by Mr. Griffin, were not noticed till the moment it was necessary for him to reply to them, when it was impossible for him to answer but from vague recollection or repetition of his former argument, or reference to the printed report. (Mr. S. in referring to his former argument, read the authorities from the printed report, but omitted much the greater part, from unwillingness to [157] fatigue the attention of the jury already exhausted. After he had concluded, it was thought too late to hear the other counsel, and the court adjourned till the following day at ten o'clock.)

Saturday, July 14th. Mr. Colden this day followed Mr. Sampson, and re-examined the principles of the law, and the leading authorities; reasoning upon them, and applying them to the case with great discrimination and ability. Admitting all the cases cited against the defendants from the English books to be of full authority, that none of them would warrant a conviction.

It seemed to him, that the moment it was admitted that the object of the conspiracy was not criminal, there ought to be an end of the prosecution. And the doctrine and argument touching a conspiracy, to do a lawful act by unlawful means, seemed to him a distinction without a difference, an unnecessary refinement, and at best a

begging of the question. To conspire to use unlawful means, was to conspire to do an unlawful thing, and was an unlawful conspiracy. All that he admitted freely. But when that was admitted, the question, whether there had been such a conspiracy, was not a whit advanced, and he contended as confidently as before, that there had not. He read and commented upon the constitution of the society, and maintained that all the words of coercion with which it abounded, all the terms of arbitrary command, which might furnish such fertile subjects for declamation, were [158] innocent and harmless, and would be so considered by any candid judgment, when the undeniable truth was taken into the account, that the only compulsion they used was a refusal to work with those whom they considered as joining in oppression against them. There was a well received and settled definition of crimes, by which they were divided into two comprehensive classes, those called *mala in se*, which were crimes against the universal laws of God and nature, and those termed *mala prohibita*, or offences against positive institutions. There must in this country be statutes enacted by the legislature, which speaks the will and voice of the people. Beyond this definition there can be no crime, and it is impossible to draw the refusal of a body of men to labour under terms disadvantageous to themselves, or which they think disadvantageous to them, under either branch of this definition, without more subtlety than ought to be admitted in the law; and more straining than the genius of our code allows to be used against defendants in any criminal case.

Mr. Griffin first summed up on the part of the prosecution. The law having been already so fully discussed, and the necessary limits of this report rendering it

necessary to compress the account of the trial, on which the facts were few, and of no interest or novelty, nothing more can be given than the outlines of the summing up.

To the authorities cited by the counsel for the prosecution on the former argument, Mr. Griffin added the following: *Rex v. Rispal*, 3 Burr. 1320. the remarks of Lord Mansfield and Justice Yates, on the subject of conspiracies, in *Vertue v. Lord Clive*, 4 Burr. 2475, 2476. the observations of Justice Grose on the same subject, in *Rex v. Mawbey, et al.* 6 D & E. 636. and the cases of *Rex v. [159] Hammond et al.* 2 Esp. Rep. 719. *Rex v. Locker et al.* 5 Esp. Rep. 107. *Rex v. Salter et al.* 5 Esp. Rep. 125.

Mr. Griffin applied himself very forcibly in answer to the observations of Mr. Sampson, upon the common law, and instead of judging it by the sharp rules of criticism, desired that it might be fairly and candidly judged by its effects. He drew a comparative view of the condition of the English people, and the English peasantry, with that of the people of the continent of Europe; of the independence of the one, and the debased and servile condition of the other. Admitting that the national code was the source of national improvement, manners, and civilization, as was argued by Mr. Sampson, what better eulogium could be passed upon the common law of England, than the flourishing and happy situation of the nation where that code prevailed. If the people of England with all their grievances are so much above the servile state of boors, or the debased and benighted condition of those of Spain and Portugal, and other countries where the sword and the inquisition govern without control of law, it must be, even from the argument of his opponent, that the national code is more exalted and more beneficial.

Why is it, added he, that "slaves cannot breathe in

England?" Why is it, that "they touch that country and their shackles fall?" It is the common law which strikes off their fetters, it is the common law which expands them into freemen.

If England in the times of general disorder throughout Europe, escaped almost singly from the devastations of civil war, revolution and invasion, it was owing to the love of the laws that animated the people to contend heart and hand, for their precious birthright, and to the genius of their [160] constitution that watched over their destiny. What else had protected the English people from guillotine, bastille and inquisition? What else had implanted in the United States the principles of freedom which had grown up and matured, and finished in their perfect independence? Why was their condition even as colonies, so much above that of Brasil or Mexico, countries towards which nature had been perhaps more lavish of her favours? It was the principles of the common law which our ancestors brought with them, which first prompted them to assert their independence, and then in the days of trial and of strife, moderated the fury of revolution, and served as sure and solid foundations of future security. It was in that free and hallowed volume which served as their *palladium*, and in which they found written the first lessons of their independence. It was the mild spirit of the common law that tempered the evils of civil convulsion and calmed the agitated waves, and finally shone forth with renovated lustre, when those storms had passed away—that common law, the great magazine which supplied our state and national constitutions with abundant and useful materials for their solid structure.

Mr. Griffin then argued upon the evidence, and admitted that there had been no personal violence, no out-

rage or disorder, but asked if the coercive measures of the society were less cruel or oppressive for that reason. He made strong remarks upon the imperious and tyrannical edicts of the constitution and by-laws of the society, and asked whether it was possible for any workman to enjoy without molestation, the indisputable rights of peace, neutrality, and self-government, in his own private and particular concerns. A journeyman was neither free to refuse entering into the society, nor at liberty, having done so, to leave it, without [161] incurring ruin or unmerited disgrace; and to the real impoverishment which he must undergo, and to the evils heaped upon all who befriend him; to all this was added, the opprobrious epithet of scab. If an individual master refused obedience to their laws, or fell under the displeasure of the society, a stroke was directed against him. And, though this stroke was not a corporal wound, it was a cruel and ruinous infliction, from which he could have no relief, unless the law provides one. He was proscribed without remorse, and outlawed without mercy.

If the master workmen in general happened to offend this society, a general cessation of labour amongst the members of their own body was decreed, to which obedience was rigorously enforced; however much the necessities of their families might require their work, idleness was enjoined upon them. They were commanded to do no manner of work; but it was a sabbath not of rest, but of vengeance, of desolation, and of suffering. Mr. Griffin urged then, a variety of other topics with great strength and effect, and concluded by what might be understood as a summary of his argument. He did not complain of the defendants for forming themselves into a society, but for com-

selling others to become members. He did not accuse them of having advanced the price of their own labour, but of conspiring to regulate, by measures of rigour and coercion, the wages and the will of others; his charge against them was not that they chose and determined for what employers they would or would not work, but that they had exercised an aristocratic and tyrannical control over third persons, to whom they left neither free will nor choice; and that they employed, to effect this purpose, means of interference in their concerns to which it was impossible for the sufferers to oppose any resistance.

[162] Mr. Emmet closed the prosecution. Before he began, Mr. Sampson cited a passage from Reeves's *History of the Common Law*, to show that besides the ordonnances to which he had adverted all to be found in Keble's *Statutes*, there was a special jurisdiction and particular laws touching the staple of wool, and that the charge of conspiracy against the merchants in the reign of Edward III. might have very possibly been for an infringement of that code, which was called the law of the staple. So that there were two ways of accounting for it, viz. by the general statutes, or by these particular regulations, in neither of which it could be an argument that such conspiracies were by the common law. Mr. S. said he would go no higher into antiquity. If his learned friend chose to do so, he might now mount up Jacob's ladder, of which one end was in this world and the other in the world above. Mr. S. also cited a certified opinion of Judge Scott of Maryland, in MS. where two cases were adjudged, one where after conviction a new trial was refused, and another, when on demurrer to evidence judgment was for the defendant—upon this distinction, that where the

party said to be injured went voluntarily into the society, there was no injury done him, however it might be if he was compelled. This, he said, was applicable to the cases of Benjamin and Whittess, both of whom had entered voluntarily.

Mr. Emmet declared that it was not his intention to advert on this occasion to a single law case, nor to open one of the numerous authorities that lay upon the table, because he had observed with what pain the jury had endeavoured to listen to the elaborate arguments of his learned adversaries, whenever they turned upon abstruse deductions from the antiquities of the law. He neither blamed the counsel nor the jury in this respect; both had tried to do their duty, [163] and he could not withhold his admiration of the research and ingenuity of his friend, who had shown such force of learning and industry. But it was plain that it was but labour in vain; for it never could be expected from the most intelligent jurors that ever were empannelled, that they should, in the accidental discharge of a duty for which they had no previous course of preparation, follow the ablest and clearest logician through a range of argument which it must have cost a practised and educated lawyer so much time and trouble to compose. It was what never was required of any jury, and it was not within their province, nor were they the worse jurors for not being deep read lawyers. The constitution had appointed two distinct offices. Judges had to determine questions of law, and jurors to decide upon questions of fact; and although the jury in criminal cases had the undoubted power, when they chose to exert it, of deciding upon law and fact, yet that was a right or power which a discreet jury would never assert but in cases where the strongest exigencies required them to do so. There were indeed occasions when important public

principles were in jeopardy, when it might be used as a saving and salutary privilege; but nothing less than such occasions would warrant a jury to pronounce upon what no understanding, by the simple force of common sense, could be equal to. The certainty of the criminal law is as important as that of the civil, and that can only be preserved by leaving it to be expounded by judges, to whom education and habit have rendered it familiar; and who join knowledge of its theory to the aptitude which practice gives. Discreet jurors know that no science is intuitive, and that law, which comprehends the rules of all men's actions, can never from its nature be so simple, as [164] that some difficulties must not at times arise in the exposition of it. When they do, it is impossible to lay down the rule, but from a knowledge of what has been established by usage or by statute, and to do so safely, a knowledge of causes and consequences, which practice only gives, is essential. As well might a lawyer think himself qualified without any previous education, to be a merchant, a farmer, or an artist, as any of those to be a lawyer. And this plainly appeared to me in the course of the summing up on the other side. Where it turned upon the facts in evidence, I saw the jury giving an attentive ear; where it was general reasoning I could mark them listening with patience; where it was humour and fancy, I saw the pleasure they received, and I joined in it, for wit and vivacity will always captivate and please. But when that laboured chain of induction which did credit to the industry and reasoning powers of my learned friend was offered to the jury-box, I could discern in their individual countenances, the truth of that sentence which says, "to questions of law jurors are not to answer."

One observation, however, touching the stricture passed upon the absurd antiquities of the common law

and I am far from denying the barbarity of its origin, and that it originated in dark and ignorant times. It is this: that its course has been marked with progressive improvement, which alone is eulogium and security enough. Mr. Emmet then passed to the constitution of the society, and dwelt with his usual force upon several of its provisions, which he represented as arbitrary and tyrannical, and going to erect an *imperium in imperio*, and overbear the rights of the citizen, and the law of the land. He took advantage of the hardship of Briton's case, and drew a lively and pathetic picture of the sufferings of an [165] inoffensive old man, and of the cruelty of exacting from his employer, the hard sacrifice of his abandonment, at the peril of his own destruction. He said he was not the advocate of any oppression, and if the masters had combined for any purpose of oppression, or in any shape against law, he would wish as much as any man that they should be indicted and convicted. His address was such as the reporter would willingly lay before the public, did the limits prescribed to him admit of it; but the same reasons for which the speeches of the other counsel have been abridged, must serve as his apology.

The charge of the court was then delivered by his honour the Mayor, to the following effect: He observed there were two points of view in which the offence of a conspiracy might be considered; the one where there existed a combination to do an act, unlawful in itself, to the prejudice of other persons; the other where the act done, or the object of it, was not unlawful, but unlawful means were used to accomplish it. As to the first, there could be no doubt that a combination to do an unlawful act was a conspiracy. The second depended on the common principle, that the goodness of the end would

not justify improper means to obtain it. If, therefore, in the present case, the defendants had confederated either to do an unlawful act, to the injury of others, or to make use of unlawful means to obtain their ends, they would be liable to the charge of a conspiracy. He observed, that the court did not mean to say, nor did the facts in the case require them to decide, whether an agreement not to work, except for certain wages, would amount to this offence, without any unlawful means taken to enforce it.

[166] Much has been said as to the application of the common law of England to the case. The absurdities of the ancient common law, and also of the statute law of England, had been exhibited in the strongest light. It was well known, that many of the ancient rules of the common law on this and other subjects had been exploded or become obsolete, and that little of the mass of absurdities complained of by the defendants' counsel, remained in force even in England. In this state the court could not be at a loss in deciding how far the common law of England was applicable. Our immediate ancestors claimed it as their birthright. They considered it as securing to them many of their highest privileges, and they often appealed to that law in support of their rights, and against the arbitrary extension of power by the British parliament. The constitution of this state had also expressly adopted it, and declared, that such parts of the common law of England, and the statute law of England and Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of said colony on the 19th April, 1775, and not repugnant to the constitution, should be and continue the law of this state, subject to such alterations and provisions as the legislature of this

state should from time to time make concerning the same, &c. No alteration having been made by our constitution or laws, the common law of England, as it existed at the period last mentioned, must be deemed to be applicable, and by that law the principles already stated appeared to be well established. No precedents, it was true, of convictions or judgments upon them had been produced from our own courts, but no strong inference could be drawn from that, as until lately such precedents had not been preserved, and no printed reports of adjudged cases had been published.

[167] The injury produced by unlawful combinations might affect any person or number of persons, as in the present case the master workmen, or the fellow journeymen of the defendants, or any other individuals. It appeared in evidence, that the society of journeymen, of which the defendants were members, had established a constitution, or certain rules for its government, to which the defendants had assented, and which they had endeavoured to enforce. These rules were made to operate on all the members of the society, on others of their trade who were not members, and through them on the master workmen, and all were coerced to submit, or else the members of the society which comprehended the best workmen in the city, were to stop the work of their employers. One of the regulations even required that every person of their trade, whom they thought worthy of notice, should become a member of the society, and of course become subject to its rules, and in case of neglect or refusal, it imposed fines on the person guilty of disobedience. When the society determined on any measure, it found no difficulty in carrying it into execution. If its ordinary functions failed, it enforced obedience by decreeing what was called a strike against

a particular shop that had transgressed, or a general turn out against all the shops in the city, terms which had been explained by the witnesses, and were sufficiently understood. These steps were generally decisive, and compelled submission in all concerned.

Whatever might be the motives of the defendants, or their object, the means thus employed were arbitrary and unlawful, and their having been directed against several individuals in the present case, it was brought, in the opinion of the Court, within one of the descriptions of the offence which had been given.

[168]The jury retired, and shortly after returned a verdict against the defendants.

The sentence was then passed by his honour the Mayor, who observed to the defendants, that the novelty of the case, and the general conduct of their body, composed of members useful in the community, inclined the court to believe that they had erred from a mistake of the law, and from supposing that they had rights upon which to found their proceedings. That they had equal rights with all other members of the community was undoubted, and they had also the right to meet and regulate their concerns, and to ask for wages, and to work or refuse; but that the means they used were of a nature too arbitrary and coercive, and which went to deprive their fellow-citizens of rights as precious as any they contended for. That the present object of the court was rather to admonish than to punish; but an adjudication upon the subject being now solemnly had, it was recommended to them, so to alter and modify their rules and their conduct, as not to incur in future the penalties of the law.

They were fined each one dollar, with the costs.

